

**Hawaii Department of Health – Clean Air Branch
Title V Operating Permit Program Evaluation**

FINAL REPORT

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Conducted by the

U.S. Environmental Protection Agency
Region 9
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ACKNOWLEDGMENTS

EPA Region 9 would like to acknowledge the cooperation of the staff and management of the Hawaii Department of Health (HDOH), Clean Air Branch (CAB) during this title V program evaluation. We appreciate their willingness to respond to information requests and share their experiences regarding the development and implementation of CAB's title V program.

EXECUTIVE SUMMARY

In response to the 2002 Office of Inspector General audit recommendations, the Environmental Protection Agency (EPA) has re-examined the ways it can improve state and local title V operating permit programs and expedite permit issuance. Specifically, EPA developed an action plan for performing program reviews of title V operating permit programs. EPA Headquarters (HQ) directed each Regional office to perform title V program evaluations for each air pollution control agency beginning in fiscal year 2003.

EPA Region 9 oversees 43 separate air permitting authorities with approved title V programs (35 in California, three in Nevada, four in Arizona, and one in Hawaii). Due to the significant number of permitting authorities, Region 9 has committed to performing one comprehensive title V program evaluation every year of a permitting authority with 20 or more title V sources. This would represent about 85% of the title V sources in Region 9 once EPA completes evaluation of those programs. The purpose of the program evaluations is to identify good practices, document areas needing improvement, and learn how EPA can help the permitting agencies improve their performance.

Region 9 recently conducted a title V program evaluation of the Hawaii Department of Health, Clean Air Branch (CAB). CAB's jurisdiction includes all five counties in Hawaii: Hawaii, Honolulu, Kalawao, Kauai, and Maui. This is the seventh title V program evaluation Region 9 has conducted. The first six were conducted at permitting authorities in Arizona, Nevada, and California. The EPA Region 9 program evaluation team consisted of the following EPA personnel: Kerry Drake, Associate Director, Air Division; Gerardo Rios, Chief of the Air Permits Office; Ken Israels, Program Evaluation Advisor; Roger Kohn, Hawaii Program Evaluation Coordinator; and Anita Lee, Air Permits Office geographic lead for Hawaii.

The evaluation was conducted in four stages. In the first stage, EPA sent CAB a questionnaire focusing on title V program implementation in preparation for the site visit at the CAB's office. (See Appendix A, Title V Questionnaire and the CAB Responses.) During the second stage of the program evaluation, Region 9 conducted a review of the CAB's title V permit files maintained by EPA, including copies of permits, statements of basis, permit applications, and correspondence. The third stage of the program evaluation was the site visit, which consisted of Region 9 representatives visiting the CAB office to interview staff and managers. The site visit took place August 10-14, 2009. The fourth stage of the program evaluation was follow-up and clarification of issues for completion of the draft report.

The five counties within the CAB's jurisdiction have a combined population of over 1.2 million people.¹ The CAB has issued 188 initial title V operating permits and 120 renewals. The majority of title V operating permit holders are power plants, petroleum refining and distribution facilities, and sand and gravel operations. CAB refers to its title V program as the "covered source" program. That term is defined in CAB's regulations (HAR §11-60.1-1) and delineates the universe of stationary sources subject to title V permitting in Hawaii. The program is an integrated permitting program in which a source's title V and preconstruction

¹ U.S. Census Bureau estimate, 2008

requirements are addressed in a single permitting process. CAB implements provisions of both its own regulations and federal PSD regulations (40 C.F.R. 52.21) in issuing permits to its covered sources.

Based on Region 9's program evaluation of the CAB, some major findings are provided below:

1. The CAB produces detailed statements of basis to support its title V permitting actions but should improve its documentation in a number of areas, including periodic monitoring, Compliance Assurance Monitoring (CAM), streamlining of multiple applicable requirements, creation of synthetic minors, and justification of why certain permit revisions qualify as minor. (See Findings 2.1 through 2.7.)
2. Title V permits generally contain monitoring sufficient to determine compliance with applicable requirements. (See Finding 3.1.)
3. The CAB's monthly visible emissions survey permit condition allows unwarranted use of a Ringlemann Chart in some cases, and does not provide an indicator to determine whether additional monitoring should be required. (See Finding 3.2.)
4. The CAB has encountered environmental justice (EJ) issues less frequently than other agencies in Region 9, but believes that EJ training would be useful in helping them identify and address potential EJ issues. (See Finding 4.1.)
5. The CAB is experiencing delays in issuing permit renewals and minor permit revisions. (See Findings 5.1 and 5.2.)
6. The CAB's permit writers use verbal waivers to extend periodic performance testing deadlines without informing compliance staff. (See Finding 6.2.)
7. The CAB finds compliance certifications, deviation and semi-annual monitoring reports useful in identifying compliance issues. (See Finding 6.3.)
8. The CAB has identified several areas where it has training needs. (See Finding 7.1.)
9. The CAB lacks sufficient modeling and source testing resources. (See Finding 7.4.)
10. The CAB collects title V fees adequate to implement its program. However, there are staffing and training needs that are not being met that are affecting program implementation. (See Finding 7.5.)
11. The CAB's covered source program makes detailed information on Hawaii's stationary sources available to the public. (See Finding 8.2.)
12. The CAB developed a small business assistance program that did not exist prior to the advent of CAB's title V program. (See Finding 8.4.)

Our report provides a series of findings (in addition to those listed above) and recommendations that should be considered in addressing our findings. We have given the CAB an opportunity to review these findings and to consider our recommendations in the context of its organization, priorities, and resources. In response to our report, as noted in the project workplan that outlines the process we followed in performing this evaluation, the CAB should prepare and submit to EPA a plan that outlines how it intends to address our findings. (See Appendix B.) The CAB could do this either by using the recommendations found in this report or alternatives selected by mutual agreement that work best for the CAB.

1. INTRODUCTION

Background

In 2000, the Office of Inspector General (OIG) initiated an evaluation on the progress of issuing title V permits by EPA and states at the request of EPA Region 5 management. Region 5 was concerned about the progress that its state and local air pollution control agencies were making in issuing title V permits under the Clean Air Act (CAA or the Act). In planning the evaluation, OIG expanded the scope to include other EPA Regions because problems in issuing title V permits were not limited to Region 5. The purpose of OIG's evaluation was to identify factors delaying the issuance of title V permits by selected state and local agencies and to identify practices contributing to timely issuance of permits by those same agencies.

After reviewing several selected state and local air pollution control agencies, OIG issued a report on the progress of title V permit issuance by EPA and states.² In the report, OIG concluded that the key factors affecting the issuance of title V permits included (1) a lack of resources, complex EPA regulations, and conflicting priorities contributed to permit delays; (2) EPA oversight and technical assistance had little impact on issuing title V permits; and (3) state agency management support for the title V program, state agency and industry partnering, and permit writer site visits to facilities contributed to the progress that agencies made in issuing title V operating permits.

OIG's report provided several recommendations for EPA to improve title V programs and increase the issuance of title V permits. In response to OIG's recommendations, EPA made a commitment in July 2002 to carry out comprehensive title V program evaluations nationwide. The goals of these evaluations are to identify areas where EPA's oversight role can be improved, areas where air pollution control agencies are taking unique approaches that may benefit other agencies, and areas of local programs that need improvement. EPA HQ directed each Regional office to perform title V program evaluations for each air pollution control agency beginning in fiscal year 2003. EPA HQ developed, with the assistance of the regional offices, an evaluation protocol.

EPA Region 9 oversees 43 separate air permitting authorities with approved title V programs (35 in California, three in Nevada, four in Arizona, and one in Hawaii). Due to the significant number of permitting authorities, Region 9 has committed to performing one comprehensive title V program evaluation every year of a permitting authority with 20 or more title V sources. This would represent about 85% of the title V sources in Region 9 once EPA completes evaluation of those programs.

² See Report No. 2002-P-00008, Office of Inspector General Evaluation Report, AIR, EPA and State Progress In Issuing title V Permits, dated March 29, 2002.

Title V Program Evaluation of the CAB

Region 9 recently conducted a title V program evaluation of the CAB. This is the seventh title V program evaluation Region 9 has conducted. The first five were conducted at permitting authorities in Arizona, Nevada, and California. The EPA Region 9 program evaluation team for this evaluation consisted of the following EPA personnel: Kerry Drake, Associate Director, Air Division; Gerardo Rios, Chief of the Air Permits Office; Ken Israels, Program Evaluation Advisor; Roger Kohn, Hawaii Program Evaluation Coordinator; and Anita Lee, Air Permits Office geographic lead for Hawaii.

The objectives of the evaluation were to assess how the CAB implements its title V permitting program, evaluate the overall effectiveness of the CAB's title V program, identify areas of the CAB's title V program that need improvement, identify areas where EPA's oversight role can be improved, and highlight the unique and innovative aspects of the CAB's program that may be beneficial to transfer to other permitting authorities. The evaluation was conducted in four stages. In the first stage, EPA sent the CAB a questionnaire focusing on title V program implementation in preparation for the site visit to the CAB office. (See Appendix A, Title V Questionnaire and CAB Responses) The title V questionnaire was developed by EPA nationally and covers the following program areas: (1) Title V Permit Preparation and Content; (2) General Permits; (3) Monitoring; (4) Public Participation and Affected State Review; (5) Permit Issuance/Revision/Renewal Processes; (6) Compliance; (7) Resources & Internal Management Support; and (8) Title V Benefits.

During the second stage of the program evaluation, Region 9 conducted an internal review of EPA's own set of the CAB title V permit files. The CAB submits title V permits to Region 9 in accordance with its EPA-approved title V program and the Part 70 regulations. Region 9 maintains title V permit files containing these permits along with copies of associated documents, permit applications, and correspondence.

The third stage of the program evaluation was the site visit, which consisted of Region 9 representatives visiting the CAB office to conduct further file reviews, interview CAB staff and managers, and review the District's permit-related databases. The purpose of the interviews was to confirm the responses in the completed questionnaire and to ask clarifying questions. The site visit took place August 10-14, 2009.

The fourth stage of the program evaluation was follow-up and clarification of issues for completion of the draft report. Region 9 compiled and summarized interview notes and made follow-up phone calls to clarify Region 9's understanding of various aspects of the title V program at the CAB. The program evaluation team met on a regular basis to work towards completion of the draft report.

CAB Description

HDOH has been issuing air quality permits to stationary sources of air pollution since the 1970s. The CAB's mission is "to protect and improve the health and environment for all people in Hawai'i".³

The CAB is organized into three Sections: Engineering, Compliance and Enforcement, and Monitoring and Analysis. Stationary source operating permits, including title V permits, are issued by the Engineering Section. Compliance and enforcement activities, such as facility inspections and source testing, and preparing enforcement cases are handled by the Compliance & Enforcement and Monitoring and Analysis sections.

The CAB Title V Program

CAB refers to its title V program as the "covered source" program. That term is defined in CAB's regulations (HAR §11-60.1-1) and delineates the universe of stationary sources subject to title V permitting in Hawaii. The program is an integrated permitting program in which a source's title V and preconstruction requirements are addressed in a single permitting process. CAB implements provisions of both its own regulations and federal PSD regulations (40 C.F.R. 52.21) in issuing permits to its covered sources.

EPA granted the CAB title V program interim approval, which became effective on December 1, 1994, and full approval, which became effective on November 30, 2001. See 40 C.F.R. Part 70, Appendix A. In 2002, EPA found that Hawaii's provisions for insignificant emission units (IEUs) did not meet the minimum requirements for title V program approval. The CAB's title V regulations contained criteria for indentifying IEUs and required that permit applications identify and describe all emissions points. However CAB's program exempted IEUs from all permitting requirements, including monitoring, testing, reporting, and compliance certification requirements. This exemption does not exist in Part 70; and the CAB's exemption rendered its program deficient in this respect. In response, EPA published a Notice of Deficiency which required that Hawaii take significant action to remove the IEU exemption from its title V regulations within 90 days. See 67 FR 15386, 4/1/02. Hawaii responded by removing the provision exempting IEUs from permitting requirements from its regulations. EPA approved the revised regulations in a title V program revision. See 72 FR 19804, 4/20/2007.

Part 70, the federal regulation that contains the title V program requirements that states must incorporate into their own title V rules, requires that a permitting authority take final action on each permit application within 18 months after receipt of a complete permit application. The only exception is that action on an application for a minor modification must be taken within 90 days after receipt of a complete permit application.⁴ The CAB's local rules contain the same timeframes for title V permit issuance.

When the CAB's title V program was first approved, the CAB estimated that it had a total of approximately 87 covered sources. However, that number has increased in the 16 years

³ From Mission Statement posted on HDOH website.

⁴ See 40 C.F.R. 70.7(a)(2) and 70.7(e)(2)(iv).

since the CAB submitted its title V program to EPA. Historically, the CAB has had sufficient permitting resources and has processed initial title V permit applications in a timely manner; but the CAB currently has a backlog of permit renewal and minor permit revision applications. As of April 2010, the CAB has issued 188 initial title V permits to covered sources and 120 renewal permits.

EPA's Findings and Recommendations

The following sections include a brief introduction, and a series of findings, discussions, and recommendations. The findings are grouped in accordance with the order of the program areas as they appear in the title V questionnaire. However, this report does not include a section on General Permits, which was a topic covered in the questionnaire, since the CAB does not issue General Permits under its title V program.

The findings and recommendations in this report are based on EPA's internal file reviews performed prior to the site visit to the CAB, the CAB's responses to our title V questionnaire, interviews and file reviews conducted during the August 10-14, 2009 site visit, and follow-up phone calls during the months after the site visit.

2. PERMIT PREPARATION AND CONTENT

The purpose of this section is to evaluate the permitting authority's procedure for preparing title V permits. The requirements of title V of the CAA are codified in 40 C.F.R. Part 70. The terms "title V" and "Part 70" are used interchangeably in this report. Part 70 outlines the necessary elements of a title V permit application under 40 C.F.R. 70.5, and specifies the requirements that must be included in each title V permit under 40 C.F.R. 70.6. Title V permits must include all applicable requirements, as well as necessary testing, monitoring, recordkeeping, and reporting requirements sufficient to ensure compliance with the permit.

2.1 Finding: The CAB produces detailed statements of basis to document its title V permitting actions.

Discussion: Part 70 requires title V permitting authorities to provide "a statement that sets forth the legal and factual basis for the draft permit conditions" (40 C.F.R. § 70.7(a)(5)). The purpose of this requirement is to support the proposed title V permit with a discussion of the decision-making that went into the development and provide the permitting authority, the public, and EPA a record of the applicability determinations and technical issues surrounding the issuance of the permit. The statement of basis should document the regulatory and policy issues applicable to the source, and is an essential tool for conducting meaningful permit review.

EPA recognizes the considerable effort that CAB puts into writing statements of basis. The CAB produces detailed statements of basis to support every title V permit (including permit revisions) it proposes. These documents, which CAB refers to as application reviews, typically contain background information on the facility, equipment descriptions, and many aspects of permit content, including applicable requirements, emission limits, and applicability determinations. However, it is common for CAB statements of basis to not address or insufficiently address significant issues or decisions.

Recommendation: The CAB should continue its practice of producing detailed statements of basis to document its title V permitting actions. However, EPA recommends that the CAB improve these documents by providing more complete and accurate explanations of the decisions made in the permitting process. The CAB should review Findings 2.2 through 2.7 of this report and develop a plan to implement our recommendations.

2.2 Finding: The CAB does not document its periodic monitoring decisions.

Discussion: Part 70 and the CAB's EPA-approved title V regulations have provisions that require permits to contain monitoring that is sufficient to demonstrate compliance with all applicable requirements. When an applicable requirement lacks monitoring requirements, or has only one time monitoring to demonstrate initial compliance or

monitoring that is too infrequent to demonstrate compliance on an on-going basis, permitting authorities must add “periodic monitoring” or “sufficiency monitoring” to fill the gaps in the applicable requirement.

The CAB does not address its periodic monitoring decisions in its statements of basis. The need for source-specific gap-filling monitoring in CAB permits may be limited due to the CAB’s strong New Source Review (NSR) program and the use of continuous emissions monitoring systems (CEMS) in some cases for combustion sources. Yet the fact that periodic monitoring is not addressed in CAB statements of basis means that the public and EPA are never informed if the CAB has made a periodic monitoring decision, which impairs the ability to comment on any such decisions.

Recommendation: The CAB should address monitoring on a case by case basis in its statements of basis. The CAB should describe the nature and rationale for any periodic monitoring that it has added to the permit, or explain that no additional monitoring is required because the monitoring in the underlying applicable requirement is sufficient to assure compliance.

2.3 Finding: The CAB’s statements of basis for minor permit revisions do not provide sufficient explanation of why the revisions qualify as minor.

Discussion: The CAB’s title V rules define three permit revision tracks: administrative permit amendments, minor modifications, and significant modifications (HAR §11-60.1-81). Administrative permit amendments are changes such as the correction of typographical errors, ownership changes, or imposition of more frequent emission monitoring requirements. Minor modifications are those that do not trigger any of the minor modification gatekeepers listed in the definition, such as changes that do not increase the emissions of any air pollutant above the permitted emission limits, or that do not involve a significant change to existing monitoring, reporting or recordkeeping requirements in the permit. CAB defines significant modifications as revisions that do not qualify as administrative permit amendments or minor modifications. Minor modifications are revisions to a federally enforceable condition that are not significant revisions or administrative amendments. This type of title V permit revision track dictates the necessary or required revision procedures and whether public notice is required. CAB’s EPA-approved title V program does not require public notice for administrative amendments and minor permit revisions, which is consistent with Part 70 requirements.

During our file review, we found many instances in which the CAB did not address the permit revision track question at all, or addressed it insufficiently or incorrectly, in its supporting documentation. For example, statements of basis for these permits are silent on why the permit revisions qualify as minor:

- Chevron Products Co. (permit 0088-01-C, proposed on September 17, 2009)
- Hamakua Energy Partners (permit 0243-01-C, proposed on May 26, 2009)

- Hawaiian Electric, Campbell Industrial Park Generating Station (permit 0548-01-C, proposed on August 24, 2009)
- Kalaeloa Cogeneration Facility (permit 0214-01-C, proposed on June 4, 2009)

In other cases, permit writers attempted to address the issue by stating that the change is a minor modification and pasting the definition of that term from the Hawaii Administrative Rules (HAR) into the document, without any analysis of the modification gatekeepers that could possibly apply. Examples include:

- Kiewit Pacific (permit 0626-01-CT, proposed on March 2, 2009)
- Chevron Hawaii Refinery (permit 0088-14, proposed on June 6, 2008)
- H-POWER (permit 0255-01-C, proposed on March 27, 2008)

Finally, in at least one other case the CAB has treated a modification as minor even though information provided in the statement of basis appears to indicate that the changes should have been processed as a significant modification. The H-POWER modification cited above authorized the replacement of two existing electrostatic precipitators (ESP) with new baghouses. The authorization of different control devices resulted in a significant change to the existing monitoring in the permit, since it required replacement of ESP monitoring provisions with baghouse monitoring conditions. Part 70 and HAR §11-60.1-81 prohibit “significant changes to existing monitoring requirements” from being processed as minor permit modifications.

Recommendation: In its statements of basis, the CAB must document why permit modifications that are processed without public notice qualify as minor modifications. These explanations should address all of the possibly applicable minor modification gatekeepers, and provide sufficient detail to allow permit reviewers to understand why the proposed modification is not a significant modification.

2.4 Finding: The analysis of CAM applicability in statements of basis has been inconsistent.

Discussion: The CAM regulations, codified in 40 C.F.R. Part 64, apply to title V sources with large emission units that rely on add-on control devices to comply with applicable requirements. The underlying principle, as stated in the preamble, is “to assure that the control measures, once installed or otherwise employed, are properly operated and maintained so that they do not deteriorate to the point where the owner or operator fails to remain in compliance with applicable requirements” (62 FR 54902, 10/22/97). Under the CAM approach, sources are responsible for proposing a CAM plan to the permitting authority that provides a reasonable assurance of compliance to provide a basis for certifying compliance with applicable requirements for pollutant-specific emission units (PSEU) with add-on control devices.

EPA expects permitting authorities to address CAM applicability in statements of basis for title V permit renewals and significant modifications. While the CAB does address

CAM applicability in its statements of basis, its explanations have often contained incorrect or incomplete statements. Examples include:

- The January 2006 statement of basis for the renewal of the HPOWER permit incorrectly states the facility is exempt from CAM because it is subject to a post-1990 National Emission Standards for Hazardous Air Pollutants (NESHAP) standard. While Part 64 does contain an exemption for such standards, this does not mean that other emission limits that apply to the same emission units do not trigger CAM. The CAB should have considered whether any other emission limits, e.g. PSD BACT limits or pre-1990 NSPS or NESHAP limits, triggered CAM applicability for the two boilers that use electrostatic precipitators for particulate control.⁵
- The statement of basis for the renewal of Hawaii Electric's Kanoelehua Hill Generating Station states that "CAM is not applicable because the units are not subject to any emission limits or standards." This is not correct because the diesel engine generators are subject to opacity standards in Special Condition B.2 that could trigger CAM. The CAB should have explained that none of the engines were subject to CAM because they do not use control devices.
- The July 2009 statement of basis for the renewal of the Applied Energy Services permit notes that the boilers are subject to CAM for PM, and that "monitoring opacity is sufficient since opacity is a direct correlation to PM emissions." (The boilers have continuous opacity meters.) The CAB did not provide any further explanation or documentation of its conclusion that a reliable correlation between opacity and particulate emissions exists, or explain how the permit contains required CAM elements, e.g., indicator ranges and a definition of "excursion" for CAM purposes.

In other cases, statements of basis for significant modifications have contained unclear references to previous permitting actions. During our file review, we found several instances where the CAB stated "no change from Covered Source Permit No... This facility is subject to CAM at 1st permit renewal." This does not provide the permit reviewer with specific documentation of why CAM does not apply. It also indicates that not all CAB permit writers are aware that a significant modification can trigger CAM if the modification involves an emission unit with a potential to emit (PTE) greater than the major source threshold. (See 40 C.F.R. 64.5(a)(2).) Examples of this language include the statements of basis for significant permit modifications for the Chevron refinery proposed on September 24, 2007 and the Tesoro refinery proposed on December 14, 2007.

We note that the CAB has addressed CAM properly in some cases, e.g., the statement of basis for the significant modification of the Aloha Petroleum permit proposed on January 11, 2006 correctly states that CAM does not apply because the facility is not a major source.

⁵ Both ESPs were subsequently replaced by baghouses when the permit was modified in 2008.

Recommendation: The CAB should devote more attention to CAM applicability during its internal review process for permit renewals and significant permit revisions. In addition, the CAB should seek additional CAM training opportunities for staff, including the class offered by EPA's Air Pollution Training Institute (APTI). (See Finding 7.1 for a discussion of CAB's training needs.) The CAB may also want to develop CAM guidance for permit writers, which EPA could review upon request.

2.5 Finding: The CAB often states in statements of basis that sources are synthetic minors without explanation.

Discussion: In Hawaii, as in the rest of the nation, some sources voluntarily accept limits on their emissions in order to limit their PTE to less than the title V and/or PSD major source thresholds to avoid being subject to those permit programs. In other cases, synthetic minor sources are created when modeling (which the CAB performs on all new and modified sources) predicts exceedances of state and/or national ambient air quality standards (NAAQS). In these cases, CAB works with the source to reduce emissions, which typically results in the creation of synthetic minor sources with emission limits and/or operational restrictions that limit PTE. Sources that elect to become synthetic minors must apply for a permit with practically enforceable PTE limits for one or more pollutants in accordance with CAB's permitting regulations.

During our file review, we encountered many instances of the CAB stating that a source was a synthetic minor, with little or no additional explanation of why the source is a synthetic minor, and what types of conditions limit its PTE. This lack of documentation makes it difficult for the public and EPA to understand the regulatory context of CAB's action and comment appropriately. Examples of statements of basis that identify the permittee as a synthetic minor without a sufficient explanation include those prepared for the renewal of the Hawaiian Cement (Halawa Aggregates Processing Facility) permit proposed on November 13, 2002 (0311-01-C), the renewal of the Kauai Aggregates permit proposed on January 5, 2009 (0332-01-C), and the renewal of the Tesoro Hawaii Corp's Hilo Terminal No. 3 proposed on August 26, 2008 (0066-03-C).

Recommendation: The CAB should expand its explanations of sources' synthetic minor status in its statements of basis, especially when the PTE limits are being proposed for the first time. Statements of basis should describe whether PTE is being limited to assure compliance with ambient air quality standards, or to avoid otherwise applicable requirements. The CAB should also identify the pollutant(s), and explain how the permit effectively limits PTE.

2.6 Finding: The CAB streamlines overlapping applicable requirements but does not document its actions in its statements of basis.

Discussion: Title V sources are frequently subject to multiple overlapping applicable requirements such as emission limits, monitoring, record keeping, and reporting requirements, based on NSPS, State Implementation Plan (SIP) rules and NSR. EPA addressed this issue in guidance early in the development of the title V program.⁶ The guidance presented a step-by-step process for permit applicants to compare overlapping applicable requirements and streamline them into a single set of permit terms and conditions.

We found instances in our file review, where the CAB had streamlined applicable requirements in permits. But the statements of basis that documented those permitting actions did not provide streamlining demonstrations in accordance with EPA policy.

Examples include:

- A combustion turbine (CT-3) at Hawaii Electric Light Company's Puna Generating Station is subject to NO_x and SO₂ emission limits from NSPS Subpart GG and PSD. The initial permit only contains the PSD emission limits for these pollutants. The statement of basis for the final permit issued in August 2001 says that the turbine is subject to Subpart GG, but does not provide a streamlining analysis.
- Two 20 MW combustion turbines (M14 and M16) at Maui Electric Company's Maalaea Generating Station are also subject to NO_x and SO₂ emission limits from NSPS Subpart GG and PSD. As with the Puna example, the permit (in this case, the renewal, issued in December 2004) only contains the PSD emission limits for these pollutants and the statement of basis does not provide a streamlining analysis.
- The two coal-fired boilers at the Applied Energy Services plant on Oahu are subject to NO_x, SO₂, and mercury emission limits from NSPS Subpart Da and PSD. CAB included the PSD limits in the renewal issued in July 2009, but did not document its streamlining in the statement of basis.

The CAB's response to the questionnaire on title V program implementation that we sent prior to our site visit is consistent with our observations from our file review. The CAB stated that "when there are multiple standards, the permit would only incorporate the most stringent requirement" (pp.4-5), but acknowledged that its statements of basis do not explain instances of streamlining (p.5).

The lack of documentation of streamlining suggests that CAB permit writers are not familiar with streamlining procedures in the title V permitting context. We corroborated this view during our site visit when permit writers, including the most experienced staff in the Engineering section, were generally unaware of streamlining procedures as described in EPA policy.

⁶ White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program, March 5, 1996

Recommendation: Permit writers should familiarize themselves with EPA’s streamlining policy, as set forth in White Paper 2.⁷ The CAB should document all instances of streamlining of overlapping applicable requirements in its statements of basis. The citations of origin and authority for permit conditions that contain streamlined requirements must include the subsumed requirements in addition to the most stringent requirements.

2.7 Finding: The CAB does not identify which HAR provisions cited in its statements of basis and permits are in the SIP.

Discussion: The CAB’s statements of basis typically contain a section called “Applicable Requirements,” which list all federal CAA requirements that apply to the facility. This section includes a subsection on the HAR. When discussing which regulations in the HAR apply to sources in its statements of basis, CAB does not reference the SIP or distinguish between provisions of the HAR that are in the SIP and therefore federally enforceable and those that are not.

SIPs are collections of state and local regulations designed to bring nonattainment areas, where the air quality does not meet the NAAQS, into attainment and ensure that attainment areas maintain good air quality. As permitting authorities update their rules, they submit some of them to EPA for approval into their SIP. In this process, gaps develop between the most current version of a rule adopted by an air district, and the version of the rule in the SIP. In Hawaii’s case, most SIP rules were approved by EPA in 1983; but Hawaii revised these rules on the state level in 2003.

The fact that CAB does not identify which HAR requirements are in the SIP makes it more difficult for permit reviewers to ensure that all applicable requirements have been included in proposed permits. In addition, this practice may result in CAB unintentionally federalizing state requirements, although this depends on the nature and extent of the rule changes the Department made in 2003.

Recommendation: CAB should identify HAR rules that are in the SIP in its statements of basis, and distinguish between federally enforceable and state-only provisions of its rules.

2.8 Finding: The CAB does not identify PSD conditions in its citations of origin and authority in its covered source permits.

Discussion: Part 70 and the CAB’s EPA-approved title V regulations require that all permits specify “the origin of and authority for each term or condition” (40 C.F.R. 70.6(a)(1)(i) and HAR §11-60.1-90). The citation is important because it provides the basis for each condition. This allows the source, inspectors, or permitting authorities to easily locate the underlying applicable requirement to obtain more details. The citation

⁷ This document is available online at <http://www.epa.gov/ttn/caaa/t5/memoranda/wtppr-2.pdf>.

also tells the permitting authority whether the permit condition can be amended, and if so, what procedures must be followed to amend the underlying applicable requirement (e.g., a PSD permit condition can be changed only by following the appropriate permit PSD permit modification procedures).

The CAB addresses this requirement by including references to Hawaii Administrative Rules (Title 11, Chapter 60.1) and federal regulations in its covered source permits. However these citations are always numerical only. This method of citation makes it difficult for permit reviewers to determine if the condition is based on PSD requirements, especially when the CAB cites the HAR. This approach complicates the permit reviewer's task of identifying PSD permit conditions in order to verify that all PSD requirements have been completely and correctly included in permits.

Recommendation: The CAB should clearly identify PSD conditions in its citations of origin and authority by including descriptive text (e.g., "PSD") or citations to 40 C.F.R. 52.21 (EPA's PSD regulations, which CAB implements via its PSD delegation), in addition to numerical HAR citations.

2.9 Finding: CAB permits contain alternative operating scenarios that allow identical replacements of emission units without new source review.

Discussion: The title V permitting program allows title V permits to contain terms and conditions for "reasonably anticipated" operating scenarios, e.g., fuel switching. A source with an approved alternative operating scenario(s) may, as part of normal operations, make changes in operations in a way that triggers a different set of applicable requirements. If a title V permit properly includes these scenarios, the permit will be a more complete representation of the source and will allow the source operational flexibility to make certain changes without obtaining a permit revision. Alternative operating scenarios are addressed in 40 C.F.R. 70.6(a)(9) and in CAB's title V program in HAR §11-60.1-90(9)(B). Permitting authorities must ensure that permits contain conditions that address all applicable requirements for each specified alternative operating scenario.

Many covered source permits issued by the CAB contain a section with conditions for "Alternate Operating Scenarios," which allow for the replacement of entire emission units, such as diesel engine generators, boilers, turbines, and crushers when repairs or maintenance of the installed unit is necessary. Examples include permits for Hawaiian Electric, Maui Electric, Grace Pacific, and Hawaiian Cement. Permits require that these replacements be the same make, model, and size as the units they are replacing. CAB permits also require sources to maintain a log to record the scenario under which it is operating, and to provide written notification to the Department prior to replacing any emission units.

However, while the permits require an emission unit replacement to be "temporary," they do not make that requirement enforceable by establishing a maximum amount of time

that a replacement unit may be operated under the alternative operating scenario. Absent such a limitation, some replacements could end up being permanent. In this scenario a source would avoid NSR, including an evaluation of PSD applicability at major PSD sources.

Recommendation: CAB permits should specify a maximum amount of time that temporary replacement units can remain at covered sources that have alternative operating scenarios that include equipment replacement. This allowable replacement period should not exceed 12 months, which would ensure that the emission unit is not considered a permanent part of the stationary source.

3. MONITORING

The purpose of this section is to evaluate the permitting authority's procedure for meeting title V monitoring requirements. Part 70 requires title V permits to include monitoring and related recordkeeping and reporting requirements. (See 40 C.F.R. 70.6(a)(3).) Each permit must contain monitoring and analytical procedures or test methods as required by applicable monitoring and testing requirements. Where the applicable requirement itself does not require periodic testing or monitoring, the permit has to contain periodic monitoring sufficient to yield reliable data from the relevant time period that is representative of the source's compliance with the permit. As necessary, permitting authorities must also include in title V permits requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

Title V permits must also contain recordkeeping for required monitoring and require that each title V source retain records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application was made. With respect to reporting, permits must include all applicable reporting requirements and require (1) submittal of reports of any required monitoring at least every six months and (2) prompt reporting of any deviations from permit requirements. All required reports must be certified by a responsible official consistent with the requirements of 40 C.F.R. 70.5(d).

Title V permits must also include CAM provisions where CAM is required.⁸ In addition to periodic monitoring, permitting authorities are required to evaluate the applicability of CAM and include a CAM plan as appropriate. CAM applicability determinations are required at initial permit issuance (for new sources with large PSEUs), permit renewal, or upon the submittal of an application for a significant title V permit revision. CAM requires a source to develop parametric monitoring for certain emission units with control devices, which may be in addition to any periodic monitoring, to assure compliance with applicable requirements.

3.1 Finding: Title V permits generally contain monitoring sufficient to determine compliance with applicable requirements.

Discussion: The CAB's covered source universe is comprised of a variety of industrial sectors, including power plants, sand and gravel operations, refineries, gasoline distributors, and landfills. EPA has reviewed many proposed CAB title V permits in the years since the CAB began implementing its title V program, and has consistently found that they contain sufficient monitoring. Our file review also confirms that the CAB's title V permits have appropriate monitoring provisions.

CAB title V permits typically require annual performance testing, and the use of CEMS in many cases for combustion sources. Other monitoring commonly found in CAB title

⁸ See 40 C.F.R. Part 64.

V permits includes the requirement to conduct opacity observations, operate fuel and hours meters, and keep records of the amount of material processed.

Recommendation: The CAB should continue to ensure that all title V permits have monitoring sufficient to determine compliance.

3.2 Finding: The CAB incorporates appropriate performance and quality assurance requirements into permits for sources with CEMS.

Discussion: The CAB's universe of title V sources includes many combustion sources that have installed CEMS to monitor emissions. Sources that operate CEMS must meet certain performance specifications and quality assurance procedures, which are set forth in Appendices B and F of 40 C.F.R. Part 60. The Part 60 requirements ensure that CEMS are designed and installed properly, and produce quality data for use in compliance determinations.

During our file review, we verified that permits for sources required to operate CEMS pursuant Best Available Control Technology (BACT) determinations incorporate the applicable Appendix B and F performance specifications. Examples are power plants, including Maui Electric (Miki Basin), Hawaii Electric (Keahole Generating Station), and refineries, including Tesoro and Chevron, and other facilities such as the H-POWER Municipal Waste Combustor Facility.

Recommendation: The CAB should continue to ensure that all permits for sources that operate CEMS to demonstrate compliance with federally enforceable emission limits contain the required Part 60 performance and quality assurance requirements.

3.3 Finding: The CAB's monthly visible emissions survey permit condition allows unwarranted use of a Ringlemann Chart in some cases, and does not provide an indicator to determine whether additional monitoring should be required.

Discussion: The CAB has a boilerplate opacity monitoring conditions that is widely used in its title V permits for sources subject to opacity standards:

The permittee shall conduct monthly (calendar month) V.E. observations for the (emission unit) in accordance with Method 9 or by use of a Ringlemann Chart as provided. For each period, two (2) consecutive six (6) minute observations shall be taken at fifteen (15) second intervals for (*the emission unit*). Records shall be completed and maintained in accordance with the Visible Emissions Form Requirements.

A Ringlemann Chart is a useful tool used by some Method 9-certified opacity readers. It consists of a series of grey and black bars of increasing darkness that correspond to increasing levels of opacity. Opacity readers use the chart to compare the observed

plume to the chart and select the closest opacity level match. Opacity readers certified in Method 9 understand the conditions required for valid readings, e.g., contrasting background, sun position, and problem-free plumes. However, readers who have never been certified have not taken the training that is necessary to understand these requirements.⁹ In its current form, the CAB's monthly opacity observation condition allows unqualified readers to use a Ringlemann Chart. Although it is not the CAB's intent, the practice of allowing unqualified readers to record opacity data undermines the utility of such data as evidence of compliance.

Moreover the use of a Ringlemann Chart is only appropriate for emission units that produce black plumes. Depending on the nature of the fuel being combusted or material being processed, some emission units may produce white plumes. In such cases, use of Ringlemann Charts is always improper. An observer that is not Method 9-certified, or at least familiar with Method 9 requirements, may not be aware of this restriction.

Finally, this permit language merely requires opacity data to be recorded, but never triggers additional monitoring, regardless of the observed opacity levels. The result is that all facilities are only required to conduct Method 9 testing annually, regardless of their margin of compliance with opacity standards or what the standards are.

Recommendation: The CAB should consider on a case-by-case basis whether permits should allow the use of a Ringlemann Chart by opacity readers because black plumes are expected from some emission units. When it is allowed, the CAB should revise its permit condition to require that only certified Method 9 readers may use a Ringlemann Chart. The CAB should also craft the condition so that it serves as a gatekeeper that can trigger additional monitoring, e.g. a Method 9 observation, if certain criteria are met. Non-certified readers should only be required to document whether or not there are visible emissions using EPA Method 22.

⁹ It is also possible that a non-certified reader might have been certified in the past but has let his/her semi-annual certification lapse, yet is still familiar with the general requirements for Method 9.

4. PUBLIC PARTICIPATION AND AFFECTED STATE REVIEW

This section examines CAB procedures used to meet public participation requirements for title V permit issuance. The federal title V public participation requirements are found in 40 C.F.R. 70.7(h). Title V public participation procedures apply to initial permit issuance, significant permit modifications, and permit renewals. Adequate public participation procedures must provide for public notice including an opportunity for public comment and public hearing on the proposed permit, permit modification, or renewal. Proposed permit actions must be noticed in a newspaper of general circulation or a State publication designed to give general public notice; to persons on a mailing list developed by the permitting authority, to those persons that have requested in writing to be on the mailing list; and by other means necessary to assure adequate notice to the affected public.

The public notice should, at a minimum, identify the affected facility; the name and address of the permitting authority processing the permit; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft permit, the application, all relevant supporting materials, and all other materials available to the permitting authority that are relevant to the permit decision; a brief description of the required comment procedures; and the time and place of any hearing that may be held, including procedures to request a hearing. See 40 C.F.R. 70.7(h)(2).

The permitting authority must keep a record of the public comments and of the issues raised during the public participation process so that EPA may fulfill the Agency's obligation under section 505(b)(2) of the Act to determine whether a citizen petition may be granted. The public petition process, 40 C.F.R. 70.8(d), allows any person who has objected to permit issuance during the public comment period to petition the EPA to object to a title V permit if EPA does not object to the permit in writing as provided under 40 C.F.R. 70.8(c). Public petitions to object to a title V permit must be submitted to EPA within 60 days after the expiration of the EPA 45-day review period. Any petition submitted to EPA must be based only on comments regarding the permit that were raised during the public comment period, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.

4.1 Finding: The CAB has encountered EJ issues less frequently than other agencies in Region 9, but believes that EJ training would be useful in helping them identify and address potential EJ issues.

Discussion: EJ is defined by EPA as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies...”¹⁰

¹⁰ See <http://www.epa.gov/compliance/environmentaljustice/index.html>.

In our interviews with CAB staff, it was clear that the CAB is aware of the concept of EJ although it has rarely encountered EJ issues. One example of an EJ issue CAB staff encountered was related to the siting of a project that would have provided housing and electricity on Hawaiian homelands.¹¹ In the end, although the CAB worked with the project proponents to help the community, the project was not completed. Two recurring themes in our interviews were the need for the CAB to have air-related EJ training and hire a dedicated modeler to assist in siting air monitors to collect data and determine if EJ issues exist in certain areas. In addition, some CAB staff cited the need to provide mapping services to help identify communities in Hawaii where the number facilities is increasing and may be experiencing cumulative adverse impacts.

Recommendation: The CAB should seek air-related EJ training and consider hiring a modeler to assist with siting monitors and other issues (See Finding 7.4 for a discussion of CAB’s resource needs, including modeling). We also encourage the CAB to invest in mapping software (geographical information system, or GIS) and modeling software to learn more about how communities where the number facilities is increasing may be impacted.

4.2 Finding: Public notices are published in newspapers depending on the island on which the facility is located.

Discussion: The federal title V public participation requirements are found in 40 C.F.R. 70.7(h) and Hawaii’s EPA approved title V program. (See HAR 11-60.1-99.) Notices of proposed initial permits, renewals, and significant modifications must be published in a newspaper of general circulation or a State publication designed to give general public notice, and provided to people who have requested inclusion on a title V mailing list maintained by the CAB, and by other means if necessary to ensure adequate notice to the affected public. The public notice must, at a minimum, identify the affected facility; the name and address of the permitting authority processing the permit; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information. See 40 C.F.R. 70.7(h)(2).

The CAB publishes notices on the availability of title V permits for public comment in both Honolulu newspapers (the Advertiser and the Star-Bulletin) as well as local newspapers for permits that are for facilities on neighbor islands (in addition to the Honolulu newspapers). For title V permits for portable sources of emissions, CAB publishes notices in newspapers that are available on all of the islands. However, as noted in Finding 4.3, the CAB does not provide these notices in languages other than English (Tagalog, Laotian, or other languages as applicable).

¹¹ As defined by the Hawaiian Homes Commission Act of 1920 (HHCA). The HHCA provides for the rehabilitation of the native Hawaiian people through a government-sponsored homesteading program. See http://www.capitol.hawaii.gov/hrscurrent/vol01_ch0001-0042f/06-Hhca/HHCA_.htm for additional details.

Recommendation: The CAB should continue this method of public outreach and look for means to publish these notices in languages other than English where appropriate. The CAB may also want to provide a means for foreign language speaker outreach, such as noting on its website that additional information can be provided in other languages or that staff may be available to talk to non-English speakers to answer their questions in their native language. These approaches may be more cost-effective than translating multiple documents.

4.3 Finding: The CAB does not have staff dedicated to public outreach.

Discussion: The CAB currently focuses very little on outreach to communities that may be affected by emissions from title V sources. In our interviews, we found that the primary focus of the CAB outreach effort is on small businesses; there is almost no staff dedicated to public outreach.¹² Interviewees noted that there was limited outreach to the public in general and no public outreach on specific permits beyond what is required by title V. Typically, the public outreach effort is limited to the permit writer arranging a newspaper notice and a public hearing in some cases.¹³ While the CAB typically does not receive public comments on proposed permits, increased public outreach efforts may increase participation. Finally, CAB staff noted that there are Filipino and Laotian communities in Hawaii, but they do not receive comments from them in the permitting process. This may be the result of a lack of translation services in the CAB's public process for permitting.

Recommendation: The CAB should expand its community outreach functions, including appropriate translation services.

4.4 Finding: The CAB could increase the effectiveness of its public outreach by expanding the amount and type of title V permitting information published on its website.

Discussion: A permitting authority's website is a powerful tool to make title V information available to the general public. Information which would be useful for the public review process can result in a more informed public and, consequently, more meaningful comments during title V permit public comment periods. The CAB provides the following information on its website: permit application forms, permit descriptions and public notices identifying opportunities to provide comments. However, the CAB should provide more useful information regarding title V permitting actions by making detailed information, such as proposed permits and statements of basis, on every title V permitting action available to the public on its website. While the CAB regularly publishes public notices of proposed title V permitting actions on its website, it does not

¹² With the exception being the staff person in Kapolei who does both business assistance as well as provides the community with updates on air quality issues.

¹³ CAB always holds hearings for PSD permits, and sometimes holds hearings for other permits if there is sufficient public interest.

publish proposed and final permits, statements of basis, and correspondence (including responses to public comments).¹⁴

Recommendation: EPA understands that the CAB may not have direct control of the content of its website. However, EPA encourages the CAB to work within HDOH to expand title V permit content information on its website in order to increase public access to the permitting process. Ideally, this website upgrade would include posting proposed and final permits and statements of basis, and information on how a member of the public can petition EPA to object to a proposed covered source permit. The CAB may want to review the websites of the Bay Area Air Quality Management District and the Arizona Department of Environmental Quality, which EPA believes are good examples of using the internet to disseminate title V information to the public.¹⁵

¹⁴ The public notices are listed at http://hawaii.gov/health/environmental/air/cab/notices/notices_index.html .

Unfortunately, this webpage only lists docket numbers, not facility or project names. This forces interested citizens to click on many linked files in order to locate the public notice document for the desired permit.

¹⁵ See <http://www.baaqmd.gov/Divisions/Engineering/Public-Notices-on-Permits.aspx> and <http://www.azdeq.gov/enviro/air/permits/index.html> .

5. PERMIT ISSUANCE / REVISION / RENEWAL

This section focuses on the permitting authority's progress in issuing initial title V permits and the District's ability to issue timely permit renewals and revisions consistent with the regulatory requirements for permit processing and issuance. Part 70 sets deadlines for permitting authorities to issue all initial title V permits. EPA, as an oversight agency, is charged with ensuring that these deadlines are met as well as ensuring that permits are issued consistent with title V requirements. Part 70 describes the required title V program procedures for permit issuance, revision, and renewal of title V permits. Specifically, 40 C.F.R. 70.7 requires that a permitting authority take final action on each permit application within 18 months after receipt of a complete permit application, except that action must be taken on an application for a minor modification within 90 days after receipt of a complete permit application.¹⁶

5.1 Finding: The CAB is experiencing delays in issuing permit renewals.

Discussion: The CAB has issued more than 170 initial title V permits to covered sources since it began implementing its title V program. In 2000, CAB began issuing renewal permits and has issued 120 renewals as of April 2010.¹⁷ However as of April 2010, the CAB has 29 renewal applications that have been complete for over 12 months without the permit renewal being issued. Part 70 requires permitting authorities to take final action on all permit applications except minor modifications within 18 months of receipt of a complete application, although CAB's program contains a more stringent provision that requires issuance of renewals within 12 months of receipt of a complete application. The CAB estimates that 63% of its renewals have been issued within 18 months. In its response to EPA's title V questionnaire, the CAB noted that while it wants to process renewals in the Part 70 timeframe, it has always given higher priority to applications for permit modifications and new sources. In addition, vacant permit writer positions contribute to delayed issuance of permit renewals. (See Finding 7.2.)

Recommendation: The CAB should develop a plan for preventing growth of the title V renewal application backlog and eliminating the current backlog.

5.2 Finding: Many minor revisions take longer than 90 days to process.

Discussion: Part 70 requires permitting authorities to take final action on permit applications for minor modifications within 90 days of receipt.¹⁸ In its response to EPA's title V questionnaire, CAB also stated that approximately 70% of its minor modification

¹⁶ See 40 C.F.R. 70.7(a)(2) and 70.7(e)(2)(iv).

¹⁷ Permits that have been renewed twice are counted as two renewals in this total.

¹⁸ Part 70 gives permitting authorities the option of allowing sources to make requested changes immediately after submitting an application, provided that sources comply with both its own proposed permit changes and the applicable requirements governing the change. See §70.7(e)(2)(v). However, CAB's title V program does not allow sources to make changes prior to issuance of permit modifications.

applications take longer than 90 days to process. Despite the high priority that the CAB places on modification applications, it often encounters delays due to the preconstruction review requirements of its minor NSR program, e.g., BACT and NAAQS modeling analyses.

Recommendation: The CAB should work to reduce the time it takes to process minor revisions to 90 days or less. See Finding 7.5 for a discussion of the efficient use of title V fee revenue, which could improve minor revision permit processing time.

5.3 Finding: The CAB does not provide EPA and the public an opportunity to review and comment on proposed synthetic minor operating permits for non-covered sources.

Discussion: The CAB has several synthetic minor sources, i.e., sources whose PTE would exceed the major source threshold if they had not voluntarily limited their PTE, or if CAB had not imposed limitations to protect state and/or federal ambient air quality standards. In many cases, such sources are still covered sources that are required to obtain title V permits under CAB's EPA-approved title V program. However in some cases a source that is not a covered source under CAB's regulations seeks a PTE limit(s) that will allow it to avoid title V permitting. In these cases, CAB does not send the proposed permit to EPA for review and comment, or send a copy of the final permit following permit issuance. Part 70 and the CAB's EPA-approved Title V program do not require that synthetic minor permits be sent to EPA. However, since this subset of synthetic minors that are non-covered sources take limits on their PTE to avoid the title V program, we believe it is appropriate for EPA to have the opportunity to review the proposed permit conditions to determine if the emission limitations are technically accurate and practically enforceable.

Recommendation: The CAB should provide EPA the opportunity to review proposed synthetic minor permits for non-covered sources, and submit copies of the final permits.

5.4 Finding: The CAB submits proposed title V permits to EPA electronically.

Discussion: The CAB uses the Electronic Permit Submittal System (EPSS), a Lotus Notes database developed by Region 9, to submit proposed title V permits, statements of basis, and other related documents to EPA. EPA also uses EPSS to transmit comments on proposed permits to CAB.

Both the CAB and EPA have benefited from EPSS, which has been in use at the CAB since 1997. The database has a review clock feature that calculates the start and end dates of EPA's 45-day review periods. Permitting time is reduced by electronic document exchange. The database is available on the Region 9 website, which allows public access to permits and related documents.

Recommendation: The CAB should continue to use EPSS to submit permits to EPA.

5.5 Finding: The CAB does not consistently send final title V permits to EPA.

Discussion: The CAB also uses the EPSS database described in Finding 5.4 to notify EPA when CAB has issued a final permit. EPSS has a feature that allows permitting authorities to indicate that the final permit is the same as the proposed permit, and notify EPA of permit issuance without transmitting the final permit document.

The CAB uses this feature in most cases when it transmits final permit data to Region 9 via EPSS, and therefore rarely sends final permits. However, it is common for permitting authorities to make changes to proposed permits before issuing final permits in response to comments from the applicant, the public, or EPA. In most cases, the CAB does not transmit the final permit even when it has made changes.

Recommendation: The CAB should transmit final permits to EPA in all cases when the final permit differs from the proposed permit.

6. COMPLIANCE

This section addresses CAB practices and procedures for issuing title V permits that ensure compliance with all applicable requirements. Title V permits must contain sufficient requirements to allow the permitting authority, EPA, and the general public to adequately determine whether the source complies with all applicable requirements.

Compliance is a central part of the title V permit program. Compliance assures a level playing field and does not allow a source an unfair economic advantage over its competitors who comply with the law. Adequate conditions in a title V permit which both determine and assure compliance with all applicable requirements also result in greater confidence in the permitting authority's title V program within both the general public and the regulated community.

6.1 Finding: The CAB does not include compliance schedules in title V permits.

Discussion: Part 70 and CAB's EPA-approved title V program require that permits issued to sources that are out of compliance with an applicable requirement at the time of permit issuance contain compliance schedules. These schedules must contain specific milestones and dates and for achieving compliance, and require the submittal of progress reports to the permitting authority. See 40 C.F.R. §70.6(c)(3) and 70.5(c)(8), and HAR §11-60.1-65 and HAR §11-60.1-68.

CAB's practice is to address compliance issues through the use of its enforcement process by issuing a notice of violation (NOV) or addressing noncompliance using an informal NOV process to return the source to compliance. When a source is out of compliance, CAB places the source under a consent agreement, which contains a compliance schedule. However, CAB does not include such compliance schedules in title V permits issued to sources that are out of compliance at the time of permit issuance. CAB staff and managers we interviewed were generally unaware of the title V compliance schedule requirement, or felt that CAB's consent agreements were sufficient to satisfy it.

In accordance with EPA policy, statements of basis for permits issued to sources that are out of compliance should have an adequate discussion of pending NOV's, and a discussion of why a compliance schedule is or is not required in the permit.¹⁹

Recommendation: CAB must include a compliance schedule in the title V permit if a source is out of compliance with an applicable requirement when CAB issues the permit. CAB should discuss the compliance status of such sources in its statements of basis.

¹⁹ See the EPA Administrator's March 15, 2005 Orders responding to petitions to EPA to object to the proposed title V permits for the Tesoro and Valero refineries in California. These Orders are available on the internet at this URL: <http://www.epa.gov/region7/air/title5/petitiondb/petitiondb2004.htm>.

6.2 Finding: CAB's permit writers use verbal waivers to extend periodic performance testing deadlines without informing compliance staff.

Discussion: Title V permits include conditions requiring the use of periodic performance testing, e.g., annual source testing, to ensure that facilities are complying with their emission limits. Once the testing is complete, sources send reports of the results to CAB's permitting staff for review.

During our interviews, we learned that it is common for sources to contact permit writers to request extensions of the deadlines by which they are required to complete source testing, despite the fact that permits don't address the possibility of extensions. Permit writers frequently grant informal verbal extensions in telephone conversations, but do not document this information or communicate it to compliance staff. CAB staff suggested that while undocumented extensions are common, sometimes permit writers use handwritten notes to remind themselves that extensions were granted. However, even in these cases, permit writers typically do not share the notes with compliance staff. This pattern of granting undocumented source test extensions has resulted in confusion (on the part of both CAB staff and sources) and inefficiency in the review of compliance with some permit conditions.

Recommendation: CAB should document in writing all extensions of performance testing requirements that it grants. In addition, as an organizational matter, only CAB compliance staff should grant extensions of performance testing deadlines, since this function is most closely associated with compliance. Permit writers should refer all sources seeking extensions to CAB compliance staff. EPA also recommends that if the CAB wants to continue this practice, permits should allow such requests and specify that they must be submitted in writing.

6.3 Finding: CAB finds compliance certifications, deviation and semi-annual monitoring reports useful in identifying compliance issues.

Discussion: CAB staff reported to EPA that compliance certifications, semiannual monitoring reports, and deviation reports have generally been very helpful to compliance staff for compliance determinations and inspection activities. These documents highlight specific areas where CAB inspectors have focused their attention during routine inspections.

CAB's title V program at HAR §11-60.1-86(a) requires title V sources to submit compliance certifications annually. These certifications provide information on the status of the source's compliance with all permit conditions, and include the methods used to determine compliance. HAR §11-60.1-90(7)(I) requires monitoring reports be submitted to CAB at least every six months. Deviations from the permit requirements are clearly identified and addressed in these reports. HAR §11-60.1-90(7)(J) requires prompt reporting of deviations from permit requirements to CAB, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any

corrective actions or preventive measures taken. According to CAB inspectors, CAB has identified compliance issues during its review of these monitoring reports and compliance certifications.

Recommendation: EPA commends CAB for its review and use of title V compliance certifications, semiannual monitoring reports, and deviation reports and encourages CAB to continue this practice.

7. RESOURCES AND INTERNAL MANAGEMENT

The purpose of this section is to evaluate how the permitting authority is administering its title V program. With respect to title V administration, EPA's program evaluation (1) focused on the permitting authority's progress toward issuing all initial title V permits and the permitting authority's goals for issuing timely title V permit revisions and renewals; (2) identified organizational issues and problems; (3) examined the permitting authority's fee structure, how fees are tracked, and how fee revenue is used; and (4) looked at the permitting authority's capability of having sufficient staff and resources to implement its title V program.

An important part of each permitting authority's title V program is to ensure that the permit program has the resources necessary to develop and administer the program effectively. In particular, a key requirement of the permit program is that the permitting authority must establish an adequate fee program. Part 70 requires that permit programs ensure that title V fees are adequate and used solely to cover title V permit program costs.²⁰ Regulations concerning the fee program and the appropriate criteria for determining the adequacy of such programs are set forth in 40 C.F.R. 70.9.

7.1 Finding: CAB has identified several areas where it has training needs.

Discussion: During our site visit, several interviewees identified training needs that, if met, could improve CAB's title V program.

CAB staff suggested that training on new federal regulations, especially when new Maximum Achievable Control Technology (MACT) standards are promulgated, would improve staff's familiarity with new regulatory requirements and help permit writers identify how best to incorporate these new requirements into title V permits. As new regulations are promulgated by EPA, new emission limits and control options become applicable to title V sources by specific compliance dates. These new regulations present implementation challenges for CAB's title V program.

Interviewees also expressed a desire for training on enforcement and EJ issues. CAB's legal staff identified title V training, primarily focusing on enforcement, as something that would improve CAB's title V program. CAB staff has also expressed interest in a class designed by EPA Region 9 that specifically covers how EJ issues have arisen in air programs and how they have been addressed.

Finally, CAB interviewees indicated that in the absence of staff that solely performs modeling functions, modeling training would be desirable to develop technical expertise and expedite modeling for non-PSD permitting actions. This training would need to cover both the review of modeling data submitted by applicants as well as modeling to

²⁰ See 40 C.F.R. 70.9(a).

ensure that sources' emissions do not cause or contribute to an exceedance of state and/or national ambient air quality standards. For additional detail, please see Finding 7.4.

Recommendation: The CAB should consider identifying core training that staff working on title V permitting should complete. The CAB should review the Air Pollution Training Institute website, found on the internet at http://www.epa.gov/apti/course_topic.html for specific areas of training that are available. In addition, in other title V program evaluations, EPA has found good examples of the type of training that the CAB may find most useful.²¹ EPA will work with the CAB to provide air-specific EJ training.

7.2 Finding: Over the past two years, the number of vacant permit writer positions at the CAB has increased.

Discussion: At the time of our site visit in August 2009, interviewees noted that over the past two years CAB had a 27% vacancy rate among permit writer positions (three vacant positions). The CAB had seven permit writers at the time of our visit. Interviewees cited anticipated decisions to lay off recent hires, mandatory state furloughs and hiring freezes, and limited opportunities in the CAB for advancement to the highest level of the State's engineer pay scale among the reasons for persistent permit writer vacancies in the CAB.

As of April, 2010, CAB faced a permit renewal backlog of 58% (a total of 29 applications) of the total pending renewal applications at the time. Unfortunately, as a result of current economic conditions in Hawaii, the State government has taken measures to reduce expenses. These measures include furloughs for staff, and spending and hiring freezes. Unfortunately, these measures are being taken while the CAB faces a backlog of permit renewals. The renewal backlog increases the workload for the CAB's seven permit writers, which is difficult to reduce without adequate resources to review the renewal applications and issue permits in a timely fashion.

Specific impacts of the permit writer vacancies include: (1) a workload situation in which certain key title V program tasks are not completed in the timeframe required by HDOH rules and Part 70 and (2) a lack of institutional knowledge at the staff level among permit writers. The current permitting workload is great enough and the staff vacancies high enough that the CAB currently does not have sufficient staff to work on reducing the title V backlog. (See Findings 5.1 and 5.2 for details on the backlog of title V renewals and modifications.) The CAB's inability to complete tasks within the statutory timeframes required by Part 70 and its EPA-approved covered source program indicates that it needs additional resources and the ability to retain them. This issue will be further exacerbated as the CAB begins permitting under EPA's Greenhouse Gas Tailoring Rule.

²¹ For example, see Finding 7.4 on pages 33 and 34 of EPA's "Bay Area Air Quality Management District Title V Operating Permit Program Evaluation Final Report September 29, 2009", which is available on EPA's website at <http://www.epa.gov/region09/air/permit/titlevevals.html>.

The number of vacant permit writer positions impedes the development of staff expertise on title V policy and programmatic issues. For example, it was apparent during interviews with permit writers that some of them were not familiar with the concept of streamlining multiple applicable requirements when drafting title V permits, as described in EPA's White Paper Number 2. (See Finding 2.6 for more details.) Vacancies deprive the CAB of additional institutional title V expertise and place a burden on management to make important decisions in every permitting action.

Finally, the CAB has not offered the same opportunities for advancement to the highest level of the State's engineer pay scale as other branches within HDOH. As a result, some of the permit writers who have left since the title V program's inception have moved from the CAB to one of the other branches within HDOH which offer better opportunities to advance in the State's engineer pay scale. Unfortunately, this salary disparity reduces the effectiveness of the CAB's title V program as institutional knowledge is lost and new hires must learn the complex title V program. The lower maximum salary has also contributed to low morale among some staff in the Engineering Section.

Recommendation: In order to improve permit writer retention and to address the permitting backlog, EPA believes that the CAB (or a third party with expertise) should conduct a salary analysis and a workload assessment. A salary analysis that compares CAB permit writer salaries to other similar positions within HDOH may lead to a system in which permit writers can demonstrate growth through their careers in a way that is comparable to what other branches within HDOH offer and might also reduce the frequency of staff transferring from the CAB's Engineering Section to other positions within HDOH. A workload assessment would help the CAB review its backlog of title V renewals and permit modifications and determine what additional resources are necessary to reduce it. It may also be desirable to assess upcoming workload from the Greenhouse Gas Tailoring Rule in addition to the CAB's title V workload. The salary analysis and workload assessment used together may also identify additional opportunities for qualified candidates for senior positions within the Engineering Section.

7.3 Finding: Communication and coordination among the CAB's offices involved in the issuance and oversight of title V permits needs improvement.

Discussion: Interviewees made it clear that most communication among the CAB's various offices working on issuance and oversight of title V permits is done on an ad-hoc basis. The Monitoring and Analysis section inspects covered sources, while the Compliance and Enforcement section inspects non-covered sources. Permitting staff rarely consult with monitoring and analysis staff. There is limited, if any, review of draft permits by enforcement staff. Additionally, there is disagreement among the staff in the Monitoring and Analysis and Compliance and Enforcement sections about which office should issue warning letters (or informal NOV's) to title V sources. Currently, the Monitoring and Analysis section issues warning letters in order to bring facilities into compliance when there are minor violations, while the Compliance and Enforcement section issues formal NOV's. Several interviewees believe that the CAB's enforcement

would be more effective if both warning letters and NOV's were only issued by the Compliance and Enforcement section.

Lack of communication in the preparation of title V permits can lead to ambiguous or incorrect technical requirements, for example in performance testing conditions, and may result in title V permits with ambiguous, unenforceable, or incorrect monitoring, recordkeeping, and reporting requirements. For example, the use of Ringlemann Charts without regard to the type of emission plumes being monitored for compliance purposes may result in erroneous compliance determinations. (See Finding 3.3.) These issues can significantly affect the implementation of the CAB's title V program. See also Finding 6.2 regarding verbal waivers of testing requirements.

Recommendation: The CAB should review and seek to improve its communication and coordination among the offices involved in issuance and oversight of title V permits. Specifically, the CAB should consider improving its interoffice communications in the review and preparation of draft title V permits to ensure that permits address significant legal, policy and technical issues. With respect to oversight and program implementation, the CAB should focus on improving communication on implementation issues such as the warning letter and NOV issues discussed above and the verbal waiver issue identified in Finding 6.2.

7.4 Finding: The CAB lacks sufficient modeling and source testing resources.

Discussion: As noted in the introduction to this report, CAB's title V program is an integrated permitting program in which a source's title V and preconstruction requirements are addressed in a single permitting process. CAB implements provisions of both its own regulations and federal PSD regulations (40 C.F.R. 52.21) for PSD major sources in issuing permits to its covered sources.

Since the CAB has an integrated permitted program, it routinely reviews modeling prepared by permit applicants as well as source tests conducted by permitted facilities. In the past, the CAB had its own modelers perform this work. However, these resources are no longer available because staff has either left the CAB or found other positions within the CAB. As a result, permit writers often find themselves reviewing complex modeling submitted by applicants, despite their lack of modeling expertise. For PSD permitting, the CAB routinely relies on EPA modelers to perform or review dispersion modeling or related functions which are clearly the CAB's responsibility.²² Interviewees also noted that modeling expertise would also be helpful in deciding where to locate monitors to determine impacts on EJ communities.

²² In HDOH's original title V program submittal, CAB identified the need for one modeling position to implement its title V program. This position was to "... be responsible for reviewing or performing the more difficult or detailed ambient air quality impact assessments associated with major sources or sources subject to the Prevention of Significant Deterioration requirements...".

A similar knowledge gap also exists for source tests. The CAB's Monitoring and Analysis section reviews testing protocols, while the Compliance and Enforcement section logs the receipt of the test results and Engineering section reviews test results. However, many of the permitting staff we interviewed were uncomfortable with this role because they do not have expertise and, in some cases, the training necessary to review source tests. We also note that permit writers having to do additional work outside of their area of expertise may contribute to the permitting backlog discussed in Findings 5.1 and 5.2.

Recommendation: The CAB should hire and retain employees with modeling and source test expertise to support its permitting program.

7.5 Finding: The CAB collects title V fees adequate to implement its program. However, there are staffing and training needs that are not being met that are affecting program implementation.

Discussion: In reviewing the CAB's accounting of title V permit fees, EPA found that the CAB collects fees adequate to implement the program. However, the CAB has not been able to spend the fees in ways that most effectively support its title V program. For example, as noted in Finding 7.2, the CAB suffers from a significant staffing shortage among permit writers. Title V fee revenue in the CAB's Clean Air Special Fund could clearly be used to hire new staff to fill vacancies and promote existing staff to reduce turnover. Title V fee revenue could also be used to address the modeling and training needs identified in Findings 7.1 and 7.4.

Despite the challenges created by permit writer vacancies and the lack of a modeler, the CAB has granted fee waivers to all covered sources four times in the last ten years. EPA is aware that the CAB faces budget limitations and spending restrictions in light of the impact of the national recession on Hawaii's economy. However, the Special Fund exists solely to fund the federal title V program and cannot be mingled with State tax revenue in the General Fund.²³ The spending limitations imposed by the Hawaii Department of Budget and Finance are intended to address declining General Fund revenue. The CAB has stated that hiring contractors or new permanent staff to write permits or perform modeling is a lengthy process and may require approval from the Governor. If the CAB determines that this is a viable method to reduce its permitting backlog, the CAB should begin the process as soon as possible to allow sufficient time to complete the approval process.

Recommendation: In light of on-going resource needs and the CAB's robust Clean Air Special Fund balances over the years, we believe that the CAB should reconsider its tendency to waive annual fees. Given the CAB's resource needs in hiring, training, and retaining staff, EPA is growing concerned that the CAB is not allocating its title V fee revenue appropriately as required by 40 C.F.R. 70.9 and 70.10(c)(1)(ii)(D). In the short term, instead of waiving fees, EPA encourages the CAB to fully explore the latitude it

²³ EPA has stated this twice in writing, most recently in our letter to HDOH dated March 24, 2009.

has within the State's spending restrictions and the extent to which those limitations apply to the Special Fund (especially with respect to the use of contracts to meet present resource needs.). In the longer term, the CAB should devise and implement a plan to spend title V fee revenue to improve the effectiveness of its permitting program. The specific programmatic areas that EPA believes the CAB should focus on in both the short and long term are the training and resource needs identified in Findings 7.1, 7.2, and 7.4.

7.6 Finding: The CAB has not updated its record retention policy to reflect current program needs.

Discussion: The contents of title V permit files are public records, unless the source has submitted records under a claim of confidentiality. The CAB has a responsibility to the public to ensure that title V public records are complete and accessible. In addition, the CAB must keep title V records for the purposes of having the information available upon EPA's request. Part 70 states that "any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction and in a form specified by the Administrator..." (See 40 C.F.R. 70.4(j)(1).)

Part 70 states that "the permit program shall require that the permitting authority provide to the Administrator a copy of each permit application..., each proposed permit, and each final Part 70 permit" (40 C.F.R. 70.8(a)(1)). Part 70 also states that "each State permitting authority shall keep for 5 years such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act or of this part" (40 C.F.R. 70.8(a)(3)). However, in practice, permitting authorities have often found that discarding title V files after five years is problematic in the long term.

The CAB has policies for retaining, managing and disposing of official records. However, these policies have not been updated to reflect the record retention requirements of the CAB's title V program. In fact, the CAB's "Records Disposition Authorization", dated July 22, 1994 includes requirements to retain official records and "... re-evaluate retention when new regulations come out detailing permit/renewal system". The CAB has not updated its record retention policy since submitting its title V program to EPA in December 1993. Many agencies' record retention policies for permit applications, proposed permits, and final permits specify that these records be kept for the life of the facility.

Recommendation: EPA recommends that the CAB update its record retention policy to make it consistent with its program. For an example of another agency's record retention policies, see EPA's report, "San Diego County Air Pollution Control District Title V Operating Permit Program Evaluation Final Report", dated September 30, 2008 at pages 35 and 36.²⁴ Additionally, in situations where a permitting authority discards title V files,

²⁴ The report is available on EPA's website at <http://www.epa.gov/region09/air/permit/titlevevals.html>.

EPA recommends that permitting authorities preserve the history and background of the title V facilities.

8. TITLE V BENEFITS

The purpose of this section is to evaluate how the permitting authority's existing air permitting and compliance programs have benefited from the administration of the permitting authority's title V program. The title V permit program is intended to generally clarify which requirements apply to a source and enhance compliance with any CAA requirements, such as NSPS or SIP requirements. The program evaluation for this section is focused on reviewing how the permitting authority's air permitting program changed as a result of title V, resulted in transparency of the permitting process, improved records management and compliance, and encouraged sources to pursue pollution prevention efforts.

8.1 Finding: Title V reporting requirements have led to increased rates of CAA compliance.

Discussion: In interviews and in its response to EPA's title V questionnaire, the CAB indicated that title V sources have become more knowledgeable of their CAA requirements as a result of the title V program. In its questionnaire response, the CAB stated that "The Title V program has brought a broader awareness of the applicable requirements. Sources are much more informed and knowledgeable of the requirements especially with the advent of the compliance certification requirements." The need to certify compliance or noncompliance with monitoring and reporting requirements in title V permits has prompted sources to take more responsibility in identifying and correcting compliance problems. Sources understand that the CAB reviews compliance certifications and will hold them accountable for failure to meet permit requirements. This has led to a better awareness of their compliance obligations, and over time more detailed and higher quality compliance certifications.

Another outcome that the CAB has observed is an increased use of self-audits, a practice that allows facilities to quickly resolve compliance problems (e.g., exceedances or breakdowns), and to prevent recurring compliance problems. This has been accompanied by increases in resources devoted to compliance monitoring. Facilities have become more proactive and focused on compliance as a result of being subject to title V.

Recommendation: EPA has no recommendation for this finding.

8.2 Finding: The CAB's covered source program makes detailed information on Hawaii's stationary sources available to the public.

Discussion: The CAB's covered source program requires that many stationary sources obtain title V permits. Covered sources include major sources, i.e., sources with a PTE of 100 tpy or greater of any pollutant, 10 tpy or more of any hazardous air pollutant (HAP), or 25 tpy or more of any combination of HAPs, and sources subject to federal NSPS and NESHAP standards. (See CAA §7412(a)(1)) and 40 C.F.R. 70.3(a)(2) and (3).) The covered source program helps the public understand how a variety of sources are

complying with their CAA applicable requirements, including how sources are limiting emissions and conducting monitoring, recordkeeping, and reporting to assure compliance. The permits provide a comprehensive listing of each source's CAA requirements. The statements of basis that the CAB prepares to support its permits explain the industrial processes used at covered sources and document each facility's emissions. With these documents, and the opportunity to participate in the permitting process by submitting written comments or attending public hearings, citizens gain valuable insight into and greater confidence in how the state of Hawaii manages its inventory of stationary sources of air pollution.

Recommendation: EPA has no recommendation for this finding.

8.3 Finding: The quality of inspections has improved as a result of title V.

Discussion: The CAB believes that the title V program has improved the quality of its stationary source inspections. The consolidation of all CAA requirements that apply to a source into one document (the title V permit) makes it easier for inspectors to prepare for and conduct inspections. Permits are clear and include practically enforceable monitoring, recordkeeping and reporting requirements. As a result, the CAB has the ability to conduct thorough inspections that allow it to accurately determine compliance.

Recommendation: EPA has no recommendation for this finding.

8.4 Finding: The CAB developed a small business assistance program that did not exist prior to the advent of the CAB's title V program.

Discussion: The CAB has dedicated resources to its small business assistance (SBA) program. From the beginning of its title V program, the CAB devoted staff and resources to assisting small businesses subject to permitting requirements. This program has conducted workshops to inform the construction industry of permitting and compliance requirements. The CAB SBA program has also held training sessions with small businesses to show them how to fill out permitting and compliance forms including permit applications. CAB staff participate on a Hawaii General Contractors Association committee to address permitting and compliance issues. In addition, the SBA program has held fugitive dust workshops for small businesses to increase awareness of regulatory requirements including permitting.

Recommendation: The CAB should continue its effective methods of small business assistance.

GLOSSARY OF ACRONYMS & ABBREVIATIONS

| | |
|------------------|---|
| Act | Clean Air Act [42 U.S.C. Section 7401 et seq.] |
| Agency | U.S. Environmental Protection Agency |
| APTI | Air Pollution Training Institute |
| CAA | Clean Air Act [42 U.S.C. Section 7401 et seq.] |
| CAB | Clean Air Branch |
| CAM | Compliance Assurance Monitoring |
| CEMS | Continuous Emissions Monitoring System |
| C.F.R. | Code of Federal Regulations |
| ESP | Electrostatic Precipitator |
| EJ | Environmental Justice |
| EPA | U.S. Environmental Protection Agency |
| GIS | Geographical Information System |
| HAP | Hazardous Air Pollutant |
| HAR | Hawaii Administrative Rules |
| HDOH | Hawaii Department of Health |
| HQ | Headquarters |
| MACT | Maximum Achievable Control Technology |
| NESHAP | National Emission Standards for Hazardous Air Pollutants, 40 C.F.R. Parts 61 & 63 |
| NAAQS | National Ambient Air Quality Standard |
| NOV | Notice of Violation |
| NSPS | New Source Performance Standards, 40 C.F.R. Part 60 |
| NSR | New Source Review |
| OIG | EPA Office of Inspector General |
| PM | Particulate Matter |
| PM ₁₀ | Particulate Matter less than 10 microns in diameter |
| PTO | Permit to Operate (local, not title V) |
| PSD | Prevention of Significant Deterioration |
| PTE | Potential to Emit |
| SIP | State Implementation Plan |

APPENDICES

Appendix A

TITLE V QUESTIONNAIRE AND CAB RESPONSES

EPA

Title V Program Evaluation

Questionnaire

Hawaii Department of Health

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- A. Title V Permit Preparation and Content
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- G. Resources & Internal Management Support
- H. Title V Benefits

A. Title V Permit Preparation and Content

- Y N 1. For those title V sources with an application on file, do you require the sources to update their applications in a timely fashion if a significant amount of time has passed between application submittal and the time you draft the permit?

A source is required to update its application if there are any changes to the facility's operations or equipment, or the applicability of any new requirement. There is no specific time period when the source is automatically required to update its application.

- Y N a. Do you require a new compliance certification?

If there are any changes to the compliance status of the source, or if additional requirements become applicable to the source, a new compliance certification is required to be submitted.

- Y N 2. Do you verify that the source is in compliance before a permit is issued and, if so, how?

The permit writers have access to inspections reports and are typically aware of any pending or past enforcement actions. Prior to issuing the permit, the permit writer may also review monitoring report forms and discuss any compliance issues with the inspector. Permit writers, in some cases also perform site inspections to verify compliance prior to issuing any permit renewals.

- a. In cases where a facility is either known to be out of compliance, or may be out of compliance (based on pending NOV's, a history of multiple NOV's, or other evidence suggesting a possible compliance issue), how do you evaluate and document whether the permit should contain a compliance schedule? Please explain, and refer to appropriate examples of statements of basis written in 2005 or later in which the Department has addressed the compliance schedule question.

All Title V permits issued contained conditions to ensure compliance with all applicable requirements. There were no permits that authorized a facility to be out of compliance with the applicable requirements.

3. What have you done over the years to improve your permit writing and processing time?

The permit writers utilize templates of the various permit Attachments and Forms in drafting permits. In the recent past, permit writers were assigned and specialized in different source categories. Permit assignments were generally based on these categories allowing the permit writers to group process similar permits.

Y N

4. Do you have a process for quality assuring your permits before issuance? Please explain.

All draft permits and engineering reviews are reviewed for technical correctness and consistency by the supervisor prior to being issued. Permit writers are also encouraged to work closely with the applicant to ensure the proposed project and equipment are well documented and accurate. In addition, up until recently, all permits were peer-reviewed by other staff engineers specialized in specific source categories and permits.

Permit templates are also used to ensure consistency and quality assurance. In addition, all final permits and application evaluations are made accessible to everyone to aid in permit consistency.

For more complex projects and projects with high public interest, the permit writers work closely with EPA including providing a copy of the draft permit and engineering review prior to the comment period.

5. Do you utilize any streamlining strategies in preparing the permit? Please explain.

The use of templates of various permit attachments and forms streamlines the process. The Department of Health (Department) is also currently working on an electronic permit application submittal process to facilitate data retrieval and submittal of complete applications.

- a. What types of applicable requirements does the Department streamline, and how common is streamlining in HDOH permits?

In general, the permits are designed to be an all-encompassing document incorporating, to the extent practical all applicable requirements. The referencing of federal regulations is kept to a minimum and is typically limited to test methods and lengthy and complex standards.

The permits are streamlined by grouping similar equipment with the same applicable requirements. In addition, when

there are multiple standards, the permit would only incorporate the most stringent requirement.

- b. Do you have any comments on the pros and cons of streamlining multiple overlapping applicable requirements? Describe.

For clarity and ease of understanding, the Department prefers imposing only the most stringent requirement in the permit. Incorporating multiple overlapping requirements in the permit will be confusing and may result in misinterpretations.

6. What do you believe are the strengths and weaknesses of the format of Department permits (i.e. length, readability, facilitates compliance certifications, etc.)? Why?

The advantages of having an all-encompassing permit (limited referencing of regulations) are that it facilitates compliance by allowing both the source and the Department to have a clear understanding of the permit requirements.

The disadvantages are that the permits are more detailed and lengthy, and may be more time consuming to process.

7. How have the Department's statements of basis evolved over the years since the beginning of the Title V program? Please explain what prompted changes, and comment on whether you believe the changes have resulted in stronger statements of basis.

The Department's statement of basis has evolved slowly over time mainly to better document and address the applicable requirements.

8. Does the statement of basis explain:

Y N

- a. the rationale for monitoring (whether based on the underlying standard or monitoring added in the permit)?

Y N

- b. applicability and exemptions, if any?

Y N

- c. streamlining (if applicable)?

Y N

9. Do you provide training and/or guidance to your permit writers on the content of the statement of basis?

Although there is no formal training, the statement of basis for all permits follow a similar format and content. All statement of basis are

required to contain specific elements including discussions on applicable requirements, BACT, emission calculations, and air quality modeling assessments.

10. Do any of the following affect your ability to issue timely initial title V permits: (If yes to any of the items below, please explain.)

- Y N a. SIP backlog (i.e., EPA approval still awaited for proposed SIP revisions)
- Y N b. Pending revisions to underlying NSR permits
- Y N c. Compliance/enforcement issues
- Y N d. EPA rule promulgation awaited (MACT, NSPS, etc.)
- Y N e. Permit renewals and permit modification (i.e., competing priorities)
- Y N f. Awaiting EPA guidance

11. Any additional comments on permit preparation or content?

Hawaii's Title V permit program is an integrated permit process incorporating both preconstruction and operating permit requirements. Although this approach streamlines the process by allowing the issuance of a single permit instead of two permits, processing times of the Title V permit requirements are often extended due to the preconstruction review requirements.

B. General Permits (GP)

Y N 1. Do you issue general permits?

We currently do not have any Title V general permits. Two Title V general permits were previously issued for perchloroethylene dry cleaners but was subsequently voided due to the federal prohibition of permitting dry cleaners under Title V.

- a. If no, go to next section
- b. If yes, list the source categories and/or emission units covered by general permits.

Y N 2. In your agency, can a title V source be subject to multiple general permits and/or a general permit and a standard “site-specific” Title V permit?

- a. What percentage of your title V sources have more than one general permit? _____%

Y N 3. Do the general permits receive public notice in accordance with 70.7(h)?

- a. How does the public or regulated community know what general permits have been written? (e.g., are the general permits posted on a website, available upon request, published somewhere?)

4. Is the 5 year permit expiration date based on the date:

Y N a. the general permit is issued?

Y N b. you issue the authorization for the source to operate under the general permit?

5. Any additional comments on general permits?

C. Monitoring

1. How do you ensure that your operating permits contain adequate monitoring (i.e., the monitoring required in §§ 70.6(a)(3) and 70.6(c)(1)) if monitoring in the underlying standard is not specified or is not sufficient to demonstrate compliance ?

All permit operational and emission limitations have accompanying monitoring requirements to ensure continuous compliance. All emission limits have either continuous emission monitoring requirements or requirements for initial and periodic stack testing. Operational limitations have appropriate monitoring and recordkeeping requirements to ensure compliance. Long-term limitations are based on a twelve-month rolling average to ensure ongoing compliance.

Y N

- a. Have you developed criteria or guidance regarding how monitoring is selected for permits? If yes, please provide the guidance.

There is no formal written guidance but the above mentioned monitoring procedures are consistently employed in all permits.

Y N

2. Do you provide training to your permit writers on monitoring? (e.g., periodic and/or sufficiency monitoring; CAM; monitoring QA/QC procedures including for CEMS; test methods; establishing parameter ranges)

We do not have a formal training program on monitoring for the permit writers. We do periodically hold workshops for permit writers including workshops on CEMS and stack testing. One individual attended a CAM workshop on the mainland.

Y N

3. How often do you “add” monitoring not required by underlying requirements? Have you seen any effects of the monitoring in your permits such as better source compliance?

We often incorporate periodic monitoring for NSPS requirements that only require an initial stack test to verify compliance. As a minimum, stack testing is required on an annual basis with the possibility of a waiver with proper justification. Waivers are granted for no more than two consecutive years.

4. What is the approximate number of sources that now have CAM monitoring in their permits? Please list some specific sources.

Currently, no permits have CAM monitoring requirements. There are 2 or 3 sources that will be subject to CAM upon first permit renewal including Mauna Loa Macadamia Nut Corporation, CSP 317-02-C and HPower proposed expansion, CSP 0255-01. There are a number of other sources that would have been subject to CAM but were exempt due to the installation of CEMS such as AES, CSP 0087-02-C; Kauai Island Utility Cooperative, CSP 0452-01-C; and HECO, CSP 0548-01-C.

- Y N 5. Has the Department ever disapproved a source's proposed CAM plan?

D. Public Participation and Affected State Review

Public Notification Process

1. Which newspapers does the Department use to publish notices of proposed title V permits?

Depending on the location of the source, public notices are published in the Honolulu Star Bulletin (Statewide), West Hawaii Today (Island of Hawaii), Hawaii Tribune Herald (Island of Hawaii), Maui News (Maui), and The Garden Isle (Kauai).

- Y N 2. Do you use a state publication designed to give general public notice?

We provide a general permit listing of permits recently issued and permits in a public comment period in the Office of Environmental Control's Environmental Notice Bulletin.

- Y N 3. Do you sometimes publish a notice for one permit in more than one paper?

- a. If so, how common is it for the Department to publish multiple notices for one permit?

It is quite common for the Department to publish notices in more than one newspaper for a single permit. Notices are published in the County of the proposed source. For permanent sources located on the neighbor islands, notices are placed in the Honolulu Star Bulletin and the neighbor island newspaper(s). For temporary sources that relocate from island to island, notices are placed in all five newspapers.

- b. How do you determine which publications to use?

The Department uses the above newspapers due to their general circulations and daily publications.

- c. What cost-effective approaches have you utilized for public publication?

We try to consolidate multiple permits in the public notices instead of issuing individual notices for each permit.

- Y N 4. Have you developed mailing lists of people you think might be interested in title V permits you propose? [e.g., public officials, environmentalists, concerned citizens]
- Y N a. Does the Department maintain more than one mailing list for Title purposes, e.g., a general Title V list and source-specific lists?
- b. How does a person get on the list? (e.g., by calling, sending a written request, or filling out a form on the Department's website)
- One can get on the mailing list by calling or sending a written request.*
- c. How does the list get updated?
- We have in recent past, sent out a form to see if there were any updates to the mailing list.*
- d. How long is the list maintained for a particular source?
- The list is maintained indefinitely until it is revised as appropriate.*
- e. What do you send to those on the mailing list?
- A copy of the printed public notice is sent to those on the mailing list.*
- Y N 5. Do you reach out to specific communities (e.g., environmental justice communities) beyond the standard public notification processes?
- Y N 6. Do your public notices clearly state when the public comment period begins and ends?
7. What is your opinion on the most effective methods for public notice?
- Public notices in daily publications in the area of the proposed source is an effective approach to reach the affected community.*
- Y N 8. Do you provide notices in languages besides English? Please list the languages and briefly describe under what circumstances the Departments translates public notice documents?

Public Comments

9. How common has it been for the public to request that the Department extend a public comment period?

Not very common. The Department is only aware of one or two extension requests in the last five to ten years.

Y N

- a. Has the Department ever denied such a request?

In one instance, the Department granted an extension request but for a period shorter than what was requested.

- b. If a request has been denied, the reason(s)?

The Department did not grant the full extension request but rather for only a period deemed more reasonable and appropriate.

Y N

10. Has the public ever suggested improvements to the contents of your public notice, improvements to your public participation process, or other ways to notify them of draft permits? If so, please describe.

11. Approximately what percentage of your proposed permits has the public commented on?

Between 5 and 10 percent

Y N

12. Over the years, has there been an increase in the number of public comments you receive on proposed title V permits?

Y N

13. Have you noticed any trends in the type of comments you have received? Please explain.

- a. What percentage of your permits change due to public comments?

The majority of the permits are revised due to public comments. Most of the revisions are normally minor in nature.

Y N

14. Have specific communities (e.g., environmental justice communities) been active in commenting on permits?

Community interest is more related to the type of project proposed and the location of the project rather than a result of specific communities.

Y N 15. Do your rules require that any change to the draft permit be re-proposed for public comment?

- a. If not, what type of changes would require you to re-propose (and re-notice) a permit for comment?

Any significant changes to the permit especially changes that relax the permit conditions would require a new public comment period. There are no rules or guidance addressing this issue. The Department uses its discretion on determining whether a permit change is significant and warrants a new public comment period. If any change results in a "significant modification" a new public comment period is required.

EPA 45-day Review

Y N 16. Do you have an arrangement with the EPA region for its 45-day review to start at the same time the 30-day public review starts? What could cause the EPA 45-day review period to restart (i.e., if public comments received, etc)?

The Department would reinitiate the 45 day EPA review period if significant comments are received which warrants EPA's consideration or if the Department proposes significant revisions to the permit.

- a. How does the public know if EPA's review is concurrent?

We currently do not provide public notification on when the EPA review period is initiated. EPA's website does provide such information.

17. If the Department does concurrent public and EPA review, is this process a requirement in your Title V regulations, or a result of a MOA or some other arrangement?

Prior to initiating concurrent reviews several years ago, the Department informed and discussed this approach with EPA. Our administrative regulations is silent on this issue.

Permittee Comments

Y N 18. Do you work with the permittees prior to public notice?

- Y N 19. Do permittees provide comments/corrections on the permit during the public comment period? Any trends in the type of comments? How do these types of comments or other permittee requests, such as changes to underlying NSR permits, affect your ability to issue a timely permit?

Permittees often provide comments on the draft permit. There are no specific trends in the comments. Receiving comments does delay the processing time since all the new issues must be resolved and comments responded to prior to issuing the permit. The Department, however, recognizes that this is an important part of the permit process to ensure the correctness of the permit.

Public Hearings

20. What criteria does the Department use to decide whether to grant a request for a public hearing on a proposed title V permit? Are the criteria described in writing (e.g., in the public notice)?

The granting of a public hearing request is based on whether a hearing would aid in the Department's permit decision and is at the sole discretion of the Director of Health. This criterion is described in the public notice. It should be noted that the Department normally grants most requests for public hearings whether or not it is determined that a hearing would aid in the decision.

- Y N a. Do you ever plan the public hearing yourself, in anticipation of public interest?

The Department, on its own motion, normally holds a public hearing on all permits that have community interest. Public hearings are also automatically held on all PSD permits.

Availability of Public Information

- Y N 21. Do you charge the public for copies of permit-related documents?

If yes, what is the cost per page?

5 cents per page.

- Y N a. Are there exceptions to this cost (e.g., the draft permit requested during the public comment period, or for non-profit organizations)?

Small records requests which can be processed through facsimile or email are send free of charge.

Y N

- b. Do your title V permit fees cover this cost? If not, why not?

The 5 cent per page reproduction cost is pursuant to a statewide statutory requirement and such activity is not believed to be directly related to the administration of the Title V program.

22. What is your process for the public to obtain permit-related information (such as permit applications, draft permits, deviation reports, 6-month monitoring reports, compliance certifications, statement of basis) especially during the public comment period?

The public notice provides an address and identifies a contact and phone number to request copies of any records. An individual may send a written request or request records via telephone. Aside from requests made during the public comment period, requests to view documents such as monitoring reports or compliance certifications, etc. are submitted to the Department on its Request to Access a Government Record form.

Y N

- a. Are any of the documents available locally (e.g., public libraries, field offices) during the public comment period? Please explain.

The administrative record consisting of the draft permit, engineering review, application and correspondences is made available in a Departmental office located in the County of the project.

23. How long does it take to respond to requests for information for permits in the public comment period?

During the public comment period, the Department normally responds to requests for information within a couple of days.

Y N

24. Have you ever extended your public comment period as a result of requests for permit-related documents?

Y N

- b. Do information requests, either during or outside of the public comment period, affect your ability to issue timely permits?

Processing information requests does take time and effort but it does not significantly affect our ability to issue timely permits.

25. What Title V permit-related documents does the Department post on its website (e.g., proposed and final permits, statements of basis, public notice, public comments, responses to comments)?

Public notices of public comment periods and hearings are posted on the Department's website.

a. How often is the website updated? Is there information on how the public can be involved?

The public notices are posted on the website at the same time they are published in the newspaper.

Y N 26. Have other ideas for improved public notification, process, and/or access to information been considered? If yes, please describe.

Y N 27. Do you have a process for notifying the public as to when the 60-day citizen petition period starts? If yes, please describe.

Upon permit issuance, the Department provides notification to all commenters of their petition and appeal rights under the applicable state and federal regulations. The notification does not identify the start of the petition period but does reference the public petition requirements of 40 CFR 70.8(d).

Y N 28. Do you have any resources available to the public on public participation (booklets, pamphlets, webpages)?

Y N 29. Do you provide training to citizens on public participation or on title V?

Y N 30. Do you have staff dedicated to public participation, relations, or liaison?

a. Where are they in the organization?

b. What is their primary function?

Affected State Review and Review by Indian Tribes

Not Applicable.

31. How do you notify tribes of draft permits?

32. Has the Department ever received comments on proposed permits from Tribes?

33. Do you have any suggestions to improve your notification process?

Any additional comments on public notification?

E. Permit Issuance / Revision / Renewal

Permit Revisions

1. Did you follow your regulations on how to process permit modifications based on a list or description of what changes can qualify for:

Y N

a. Administrative amendment?

Y N

b. §502(b)(10) changes?

Y N

c. Significant and/or minor permit modification?

Y N

d. Group processing of minor modifications?

Our administrative rules do not include reference to group processing of minor modifications. The Department may at times process multiple proposed minor modifications in a single permit revision.

2. Approximately how many title V permit revisions have you processed?

a. What percentage of the permit revisions were processed as:

i. Significant
~85 or 39.4%

ii. Minor
~108 or 50.0%

iii. Administrative
~22 or 10.2%

iv. Off-permit
0%

v. 502(b)(10)
1 or 0.5%

3. How many days, on average, does it take to process (from application receipt to final permit revision):

a. a significant permit revision?
300 days average (204 days median)

- b. a minor revision?
208 days average (112 days median)

4. How common has it been for the Department to take longer than 18 months to issue a significant revision, 90 days for minor permit revisions, and 60 days for administrative amendments? Please explain.

*~ 12% of significant revisions took longer than 18 months
~ 70% of minor revisions took longer than 90 days
~ < 5% of administrative amendments took longer than 60 days.*

5. What have you done to streamline the issuance of revisions?

The establishment of a two tier system (minor modification and significant modification processes), streamlines the issuance of revisions. Although the Department placed high priority on revision applications, delays are often encountered due to the preconstruction review requirements such as BACT and NAAQS modeling analyses.

6. What process do you use to track permit revision applications moving through your system?

Applications for permit revisions are logged into the Department's data base along with all other applications. The application is identified as a revision in the data base.

Y N

7. Have you developed guidance to assist permit writers and sources in evaluating whether a proposed revision qualifies as an administrative amendment, off-permit change, significant or minor revision, or requires that the permit be reopened? If so, provide a copy.

Although there are no guidance, the administrative rules clearly define the criteria for an administrative amendment, minor modification and significant modification. We do not allow off-permit changes.

Y N

8. Do you require that source applications for minor and significant permit modifications include the source's proposed changes to the permit?

Y N

- a. For minor modifications, do you require sources to explain their change and how it affects their applicable requirements?

Y N

9. Do you require applications for minor permit modifications to contain a certification by a responsible official that the proposed modification

meets the criteria for use of minor permit modification procedures and a request that such procedures be used?

10. When public noticing proposed permit revisions, how do you identify which portions of the permit are being revised? (e.g., narrative description of change, highlighting, different fonts).

The public notice contains a narrative description of the proposed changes.

11. When public noticing proposed permit revisions, how do you clarify that only the proposed permit revisions are open to comment?

When the proposed permit amendment contains only revisions to the permit, not existing unchanged permit conditions, the public notice states the Department of Health is accepting comments on only the proposed revisions.

Permit Renewal Or Reopening

Y N

12. Do you have a different application form for a permit renewal compared to that for an initial permit application?

- a. If yes, what are the differences?

The application for a permit renewal requires the applicant to provide the following information:

- Statement certifying that no changes have been made in the design or operation of the source as proposed in the initial and any subsequent Covered Source Permit applications.*
- If changes have occurred or are being proposed, the applicant shall provide a description of those changes such as work practices, operations, equipment design, and monitoring procedures, including the affected applicable requirements associated with the changes and the corresponding information to determine the applicability of all applicable requirements.*

Y N

13. Has issuance of renewal permits been “easier” than the original permits? Please explain.

Permit renewals are made “easier” for the following reasons:

- *No ambient air quality analysis if the application is only a renewal.*
- *With the exception of adding new requirements to the permit as a result of newly promulgated regulations, many permit conditions only need updating to be made current.*
- *An assessment of BACT is not needed.*

Y N 14. How are you implementing the permit renewal process (ie., guidance, checklist to provide to permit applicants)?

Permittees are notified by mail that a renewal application must be submitted at least 12 months prior to the permit expiration date. Application forms and instructions are sent to the permittee along with the notification.

15. What % of renewal applications have you found to be timely and complete?

~80%

16. How many complete applications for renewals do you presently have in-house ready to process?

52

Y N 17. Have you been able to or plan to process these renewals within the part 70 timeframe of 18 months? If not, what can EPA do to help?

63% of renewal applications have been processed within 18 months.

The Department does desire to process permit renewals within the part 70 time frame however priority has always been given to new sources and modifications in lieu of renewals.

Y N 18. Have you ever determined that an issued permit must be revised or revoked to assure compliance with the applicable requirements?

We have internally reopened and revised permits that were determined to contain errors and not assure compliance with the applicable requirements.

F. Compliance

1. Deviation reporting:

- a. Which deviations do you require be reported prior to the semi-annual monitoring report? Describe.

Immediate notification is required for malfunctions or break downs that result in the emission of air pollutants in violation of the permit. The permittee must then provide written notification within five working days.

All permit deviations are required to be reported in writing within five working days.

Y N

- b. Do you require that some deviations be reported by telephone?

Immediate notification is required for malfunctions or break downs that result in the emission of air pollutants in violation of the permit.

- c. If yes, do you require a followup written report? If yes, within what timeframe?

A written report is required within five working days from its occurrence.

Y N

- d. Do you require that all deviation reports be certified by a responsible official? (If no, describe which deviation reports are not certified).

Y N

- i. Do you require all certifications at the time of submittal?

Y N

- ii. If not, do you allow the responsible official to “back certify” deviation reports? If you allow the responsible official to “back certify” deviation reports, what timeframe do you allow for the followup certifications (e.g., within 30 days; at the time of the semi-annual deviation reporting)?

2. How does your program define deviation?

All non-conformances with permit conditions are considered deviations.

Y N

- a. Do you require only violations of permit terms to be reported as deviations?

All deviations from permit conditions are considered violations and are required to be reported.

b. Which of the following do you require to be reported as a deviation (Check all that apply):

Y N

i. excess emissions excused due to emergencies (pursuant to 70.6(g))

Y N

ii. excess emissions excused due to SIP provisions (cite the specific state rule)

SIP does not include excess emissions provision.

Y N

iii. excess emissions allowed under NSPS or MACT SSM provisions?

Y N

iv. excursions from specified parameter ranges where such excursions are not a monitoring violation (as defined in CAM)

Y N

v. excursions from specified parameter ranges where such excursions are credible evidence of an emission violation

Y N

vi. failure to collect data/conduct monitoring where such failure is "excused":

Y N

A. during scheduled routine maintenance or calibration checks

Y N

B. where less than 100% data collection is allowed by the permit

Y N

C. due to an emergency

Y N

vii. Other? Describe.

3. Do your deviation reports include:

Y N

a. the probable cause of the deviation?

Yes for all deviations.

Y N

b. any corrective actions taken?

Yes for all deviations.

Y N

c. the magnitude and duration of the deviation?

Yes for excess emissions.

Y N

4. Do you define “prompt” reporting of deviations as more frequent than semi-annual?

We require a written report of the deviation be submitted within five working days of its occurrence.

Y N

5. Do you require a written report for deviations?

Y N

6. Do you require that a responsible official certify all deviation reports?

7. What is your procedure for reviewing and following up on:

a. deviation reports?

Enforcement and Monitoring Sections of the Clean Air Branch reviews all deviation reports and takes enforcement action if needed.

b. semi-annual monitoring reports?

Enforcement and Monitoring Sections of the Clean Air Branch reviews all semi-annual monitoring reports and takes enforcement action if needed.

c. annual compliance certifications?

Enforcement and Monitoring Sections of the Clean Air Branch reviews all annual compliance certifications and takes enforcement action if needed.

8. What percentage of the following reports do you review?

a. deviation reports

Enforcement and Monitoring Sections of the Clean Air Branch reviews 100% of the deviation reports.

b. semi-annual monitoring reports

Enforcement and Monitoring Sections of the Clean Air Branch reviews 100% of the semi-annual monitoring reports.

c. annual compliance certification

Enforcement and Monitoring Sections of the Clean Air Branch reviews 100% of the annual compliance certifications.

9. Compliance certifications

Y N

- a. Have you developed a compliance certification form? If no, go to question 10.

Y N

- i. Is the certification form consistent with your rules?
ii. Is compliance based on whether compliance is continuous or intermittent or whether the compliance monitoring method is continuous or intermittent?

Compliance is based on whether compliance is continuous or intermittent.

Y N

- iii. Do you require sources to use the form? If not, what percentage does?

Y N

- iv. Does the form account for the use of credible evidence?

Y N

- v. Does the form require the source to specify the monitoring method used to determine compliance where there are options for monitoring, including which method was used where more than one method exists?

10. Excess emissions provisions:

Y N

- a. Does your program include an emergency defense provision as provided in 70.6(g)? If yes, does it:

Y N

- i. Provide relief from penalties?

Y N

- ii. Provide injunctive relief?

CAB has general injunctive relief authority on any deviation of the permit.

Y N

- iii. Excuse noncompliance?

If it constitutes an affirmative defense.

- Y N
- b. Does your program include a SIP excess emissions provision?
If no, go to 10.c. If yes does it:
- Y N i. Provide relief from penalties?
- Y N ii. Provide injunctive relief?
- Y N iii. Excuse noncompliance?
- c. Do you require the source to obtain a written concurrence from the Department before the source can qualify for:
- Y N i. the emergency defense provision?
- Y N ii. the SIP excess emissions provision?
- SIP does not include an excess emissions provision.*
- Y N iii. NSPS/NESHAP SSM excess emissions provisions?

11. Is your compliance certification rule based on:

- Y N a. the '97 revisions to part 70 - i.e., is the compliance certification rule based on whether the compliance monitoring method is continuous or intermittent; or:
- Y N b. the '92 part 70 rule - i.e., is the compliance certification rule based on whether compliance was continuous or intermittent?

12. Any additional comments on compliance?

G. Resources & Internal Management Support

- Y N 1. Are there any competing resource priorities for your “title V” staff in issuing Title V permits?

a. If so, what are they?

*Minor source permits
Preconstruction review requirements
Stack test plans and reports
Change of location approvals
Air quality modeling
Permit applicability determinations*

2. Are there any initiatives instituted by your management that recognize/reward your permit staff for getting past barriers in implementing the title V program that you would care to share?

No

3. How is management kept up to date on permit issuance?

Monthly reports on the permit issuance status are prepared for management.

- Y N 4. Do you meet on a regular basis to address issues and problems related to permit writing?

Although meetings are not scheduled on a regular basis, meetings are conducted as appropriately needed.

- Y N 5. Do you charge Title V fees based on emission rates?

a. If not, what is the basis for your fees?

b. What is your Title V fee?

Our Title V fee is currently \$46.94 per ton (excluding carbon monoxide and HAPs). Annual fees are adjusted by the consumer price index each year. Title V sources also pay \$11.44 per ton to the Noncovered source permit program. The Department also collects a nominal amount of fees from permit applications.

6. How do you track title V expenses?

All Title V expenses and revenues are recorded and tracked through the dedicated Clean Air Special Fund – Cov account.

7. How do you track title V fee revenue?

All fees received are logged in a fee database. In addition, all receipts written for any checks received are recorded in a separate database. All Title V fees are deposited into a dedicated special fund account.

8. How many Title V permit writers does the agency have on staff (number of FTE's)?

8 permit writers and one supervisor. The Title V permits are processed by the Engineering Section. The Engineering Section has 14 positions including one supervisor and is organized into two groups, permits and program development. The permit writers are responsible for the processing the Title V and minor source permits.

Y N

9. Do the permit writers work full time on Title V?

a. If not, describe their main activities and percentage of time on title V permits.

In addition to Title V permits, permit writers are tasked with the processing of minor source permits, reviewing stack test plans and reports, processing change of location approvals, and other miscellaneous duties. The Title V permits and minor source permits also incorporate preconstruction review requirements. The permit writers are responsible for the implementation of these requirements including determining emissions, BACT and performing an air modeling assessments. Title V activities account for approximately 50 – 80 percent of the overall duties.

b. How do you track the time allocated to Title V activities versus other non-title V activities?

Weekly time and effort sheets for each employee identify the amount of time worked on Title V activities.

Y N

10. Are you currently fully staffed?

In the engineering section, we currently have one vacancy.

11. What is the ratio of permits to permit writers?

Currently, about 23 permit applications (including minor source permits) to one permit writer.

12. Describe staff turnover.

The engineering section has lost 5 engineers due to turnover in the last three years.

a. How does this impact permit issuance?

Permit issuance is impacted significantly due to the reduction in resources and the time needed to rehire and train new permit engineers. On average, it takes approximately six months to a year to fill a vacant position and another 6 months to a year for an individual to be fully trained and self-reliant.

b. How does the permitting authority minimize turnover?

The state position offers job security and good benefits.

Y N 13. Do you have a career ladder for permit writers?

a. If so, please describe.

Y N 14. Do you have the flexibility to offer competitive salaries?

The salaries are fixed by union contracts.

Y N 15. Can you hire experienced people with commensurate salaries?

16. Describe the type of training given to your new and existing permit writers.

Training consist mainly of a hands-on approach by directly working on permit applications and reviewing previous work assignments. The Department also hosts periodic workshops for the engineering section or provide opportunity for individuals to attend workshops on the mainland. New permit writers are also encouraged to take basic EPA's APTI self-study courses at the onset of their tenure.

17. Does your training cover:

- Y N a. how to develop periodic and/or sufficiency monitoring in permits?
- Y N b. how to ensure that permit terms and conditions are enforceable as a practical matter?
- Y N c. how to write a Statement of Basis?
- Y N 18. Is there anything that EPA can do to assist/improve your training? Please describe.

19. How has the Department organized itself to address Title V permit issuance?

Title V permits are processed by the Engineering Section of the Clean Air Branch. The section is organized into two separate groups, permit writing and other program activities.

20. Overall, what is the biggest internal roadblock to permit issuance from the perspective of Resources and Internal Management Support?

In addition to the ever-increasing federal regulations, the Department has also been experiencing a steady increase in the amount of applications received and total amount of permitted sources where resources are becoming a concern. In the last ten years, the amount of applications received have more than doubled from approximately 60 per year to 130 per year with no change in resources.

Environmental Justice Resources

- Y N 21. Do you have Environmental Justice (EJ) legislation, policy or general guidance which helps to direct permitting efforts?
- If so, may EPA obtain copies of appropriate documentation?
- Y N 22. Do you have an in-house EJ office or coordinator, charged with oversight of EJ related activities?
- Y N 23. Have you provided EJ training / guidance to your permit writers?
- Y N 24. Do the permit writers have access to demographic information necessary for EJ assessments? (e.g., soci-economic status, minority populations, etc.)

Y N

25. When reviewing an initial or renewal application, is any screening for potential EJ issues performed? If so, please describe the process and/or attach guidance.

The Department does not address EJ issues in the application review process unless the issue is brought to our attention. The Department has on one occasion received EJ comments during the public comment period. The Department addressed the EJ issues in its responses to comments prior to issuing the permit.

H. Title V Benefits

1. Compared to the period before you began implementing the Title V program, does the Title V staff generally have a better understanding of:

- Y N a. NSPS requirements?
- Y N b. The stationary source requirements in the SIP?
- Y N c. The minor NSR program?
- Y N d. The major NSR/PSD program?
- Y N e. How to design monitoring terms to assure compliance?
- Y N f. How to write enforceable permit terms?

Since none of the current staff permit writers were working before Title V, the above answers are based on the general requirements of Title V as compared to the previous permit process.

2. Compared to the period before you began implementing the Title V program, do you have better/more complete information about:

- Y N a. Your source universe including additional sources previously unknown to you?
- Y N b. Your source operations (e.g., better technical understanding of source operations; more complete information about emission units and/or control devices; etc.)?
- Y N c. Your stationary source emissions inventory?
- Y N d. Applicability and more enforceable (clearer) permits?

3. In issuing the Title V permits:

- Y N a. Have you noted inconsistencies in how sources had previously been regulated (e.g., different emission limits or frequency of testing for similar units)? If yes, describe.
- Y N b. Have you taken (or are you taking) steps to assure better regulatory consistency within source categories and/or between sources? If yes, describe.

4. Based on your experience, estimate the frequency with which potential compliance problems were identified through the permit issuance process:

Never Occasionally Frequently Often

- a. prior to submitting an application √
- b. prior to issuing a draft permit √
- c. after issuing a final permit √

5. Based on your experience with sources addressing compliance problems identified through the Title V permitting process, estimate the general rate of compliance with the following requirements prior to implementing Title V:

Never Occasionally Frequently Often

- a. NSPS requirements (including failure to identify an NSPS as applicable) √
- b. SIP requirements √
- c. Minor NSR requirements (including the requirement to obtain a permit) √
- d. Major NSR/PSD requirements (including the requirement to obtain a permit) √

6. What changes in compliance behavior on the part of sources have you seen in response to Title V? (Check all that apply.)

- Y N a. increased use of self-audits?
- Y N b. increased use of environmental management systems?
- Y N c. increased staff devoted to environmental management?
- Y N d. increased resources devoted to environmental control systems (e.g., maintenance of control equipment; installation of improved control devices; etc.)?
- Y N e. increased resources devoted to compliance monitoring?
- Y N f. better awareness of compliance obligations?
- Y N g. other? Describe.

- Y N 7. Have you noted a reduction in emissions due to the Title V program?
- Y N a. Did that lead to a change in the total fees collected either due to sources getting out of title V or improving their compliance?
- Y N b. Did that lead to a change in the fee rate (dollars/ton rate)?
8. Has title V resulted in improved implementation of your air program in any of the following areas due to Title V:
- Y N a. netting actions
- Y N b. emission inventories
- Y N c. past records management (e.g., lost permits)
- Y N d. enforceability of PTE limits (e.g., consistent with guidance on enforceability of PTE limits such as the June 13, 1989 guidance)
- Y N e. identifying source categories or types of emission units with pervasive or persistent compliance problems; etc.
- Y N f. clarity and enforceability of NSR permit terms
- Y N g. better documentation of the basis for applicable requirements (e.g., emission limit in NSR permit taken to avoid PSD; throughput limit taken to stay under MACT threshold)
- Y N h. emissions trading programs
- Y N i. emission caps
- Y N j. other (describe)
- Y N 9. If yes to any of the above, would you care to share how this improvement came about? (e.g., increased training; outreach; targeted enforcement)?
- Y N 10. Has Title V changed the way you conduct business?
- Y N a. Are there aspects of the Title V program that you have extended to other program areas (e.g., require certification of accuracy and completeness for pre-construction permit

applications and reports; increased records retention; inspection entry requirement language in NSR permits). If yes, describe.

Many of the Title V permit and application requirements have been transferred to the minor source permit program. The Title V and minor source permit program's application forms and permit content are very similar.

Y N

- b. Have you made changes in how NSR permits are written and documented as a result of lessons learned in Title V (e.g., permit terms more clearly written; use of a statement of basis to document decision making)? If yes, describe.

Y N

- c. Do you work more closely with the sources? If yes, describe.

The Department works closely with the source to ensure that the information in the application such as the equipment design and specifications, emissions, operating conditions and monitoring procedures are correct and accurate. For complex sources with multiple requirements, the Department would often provide a pre-draft of the permit to the source prior initiating the public comment period.

Y N

- d. Do you devote more resources to public involvement? If yes, describe.

More effort and resources are used as a result of the public participation requirements of Title V. With the exception of administrative amendments and minor modifications, all Title V permit actions require a 30 day public comment period.

Y N

- e. Do you use information from Title V to target inspections and/or enforcement?

All Title V sources are inspected at least once a year.

Y N

- f. Other ways? If yes, please describe.

Y N

11. Has the Title V fee money been helpful in running the program? Have you been able to provide:

Y N

- a. better training?

Y N

- b. more resources for your staff such as CFRs and computers?

- Y N c. better funding for travel to sources?
- Y N d. stable funding despite fluctuations in funding for other state programs?
- Y N e. incentives to hire and retain good staff?
- Y N f. are there other benefits of the fee program? Describe.

The federal restrictions on using Title V fees to solely cover the direct and indirect costs of the Title V program provide financial stability for the program.

- Y N 12. Have you received positive feedback from citizens?
- Y N 13. Has industry expressed a benefit of Title V? If so, describe.
- Y N 14. Do you perceive other benefits as a result of the Title V program? If so, describe.

The Title V program has brought a broader awareness of the applicable requirements. Sources are much more informed and knowledgeable of the requirements especially with the advent of the compliance certification requirements.

- Y N 15. Other comments on benefits of Title V?

Good Practices not addressed elsewhere in this questionnaire

Are any practices employed that improve the quality of the permits or other aspects of the title V program that are not addressed elsewhere in this questionnaire?

No

EPA assistance not addressed elsewhere in this questionnaire

Is there anything else EPA can do to help your title V program?

No

Appendix B

WORKPLAN FOR CAB TITLE V PROGRAM EVALUATION

**Workplan
for
Title V Program Evaluation
Hawaii Department of Health, Clean Air Branch**

US EPA, Region 9

OBJECTIVES

- To perform a title V program evaluation of the Hawaii Department of Health (HDOH), Clean Air Branch
- To identify any areas for improvement in HDOH's title V program and in EPA's own oversight role.
- To identify areas where HDOH's program could be used as an example for other permitting authorities to improve their implementation of title V.

HDOH is one of several air permitting agencies in Region 9 where EPA plans to perform title V program evaluations. These evaluations are being performed nationwide by EPA.

EPA PROGRAM EVALUATION TEAM FOR HDOH

The following staff and managers are part of EPA's program evaluation team. Should you have any questions, please contact Roger Kohn (415/972-3973) or Gerardo Rios (415/972-3974).

Site Visit Participants:

1. Kerry Drake - Air Division Associate Director, Division lead for Hawaii
2. Gerardo Rios - Air Division Permits Office Chief
3. Roger Kohn – HDOH title V program evaluation coordinator, Permits Office
4. Anita Lee – HDOH title V program evaluation team member, Permits Office geographic lead contact for HDOH,
5. Ken Israels – HDOH title V program evaluation team member, Grants and Program Integration Office

Other EPA Staff Providing Assistance:

6. Kara Christenson - Office of Regional Counsel

APPROACH

The program evaluation will be conducted in two stages.

- Stage I: HDOH's responses to the title V program evaluation questionnaire will help us prepare for the second stage of the program evaluation.
- Stage IIa: In-House File Review. EPA will conduct a review of in-house permit files prior to the site visit.
- Stage IIb: Site Visit (interviews and on-site file reviews). During the site visit, EPA will visit HDOH's office to interview staff and managers involved in the title V program. In addition, EPA will conduct a review of HDOH files/systems, such as any title V-related documents which were not available during the in-house file review, HDOH's tracking system for title V permits and related documents, and standard operating procedures.
- Stage IIc: Follow-up and Report. EPA may need to contact certain HDOH staff/managers for follow-up questions and/or to complete some interviews. EPA will prepare a draft report, which we will share with HDOH for review and comment. EPA will then issue the final report.

DETAILED DESCRIPTION OF EPA EFFORTS

EPA will examine how HDOH implements its title V permitting program. Particular emphasis will be placed on HDOH's overall program goals and how decisions are made. We will also review some aspects of the program implementation budget and evaluate how title V resources are allocated. We will work closely with HDOH throughout the program evaluation.

Needed Information

Listed below is information EPA will need to help us prepare for the site visit to HDOH:

- A listing of staff related to the title V program with their respective responsibilities.
- HDOH's current organizational chart with names and phone numbers.
- A flowchart (or other information) of HDOH's title V fee structure clearly showing how fees are set, collected, tracked, and used in support of the program. In addition, HDOH should provide specific references to title V fee-related legislation used by the Department.
- a list of covered sources the Department regulates under its title V program

Interviews

During the site visit, EPA will interview HDOH managers and staff who are involved with the title V program. EPA will schedule interview appointments in advance. We would like to ask for your assistance in identifying appropriate interviewees.

During the interviews, we plan to ask questions based on the areas addressed in the title V Program Evaluation Questionnaire sent to HDOH. These areas include (1) title V permit preparation and content, (2) monitoring, (3) public participation, (4) permit issuance, revision, and renewal, (5) compliance, (6) resources & internal management support, and (7) title V benefits. EPA's interview questions may also be based upon our in-house file reviews.

Other Site Visit Activities

EPA plans to review the systems used by HDOH for tracking title V permits, applications, emission inventories, title V fees, compliance certifications, and related reports. We would also like to examine how title V permit and compliance files are organized at the HDOH office. We may also review title V-related documents that were not available during our in-house file review. During our site visit, we will need access to all the systems and files described above.

Site Visit Schedule

The site visit will occur August 10-14 of this year. We will work with HDOH before the site visit to schedule individual, on-site interviews. In general, we plan to conduct interviews for the first four days and review the tracking systems and files on the last day.

Follow-up After Site Visit and Completion of Report

EPA may follow up by phone with HDOH after the site visit to ask for clarification on any questions or issues resulting from our visit. Also, in previous program evaluations, we occasionally found that we were not able to ask all the interview questions in the time allotted for the interview. If this occurs during the HDOH evaluation, we will coordinate with HDOH to schedule follow-up interviews.

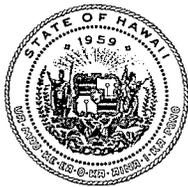
EPA plans to issue a draft report in early 2010. The report will be based on the interviews, the site visit, and our internal file reviews of title V permits and related documents issued by HDOH. The report will allow EPA to document the successes and areas needing improvement that arise from the program review. Prior to public release, EPA will issue the draft report to HDOH for a 30-day review and comment period. After considering HDOH's comments and input, EPA will issue the final report with our recommendations.

A copy of EPA's final report will be made publicly available and will be published on our website. If a corrective action plan is necessary, there may be a follow-up step after the corrective action plan is finalized to determine how well the recommendations/commitments are being implemented.

Appendix C

CAB COMMENTS ON DRAFT REPORT AND EPA RESPONSES

LINDA LINGLE
GOVERNOR OF HAWAII



CHIYOME L. FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

August 5, 2010

10-579E CAB

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
(7009 0960 0000 3848 6756)

Mr. Gerardo C. Rios
Chief, Permits Office
Air Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105-3901

Dear Mr. Rios:

Subject: Draft Title V Operating Program Evaluation Report

Thank you for the opportunity to provide comments on the draft Title V program evaluation report for the Hawaii Department of Health, Clean Air Branch (CAB). We appreciate the Environmental Protection Agency (EPA)'s effort in conducting the evaluation and look forward to continue working with EPA to identify ways to improve our Title V program. Our comments on the specific findings and recommendations in the evaluation report are provided in the enclosed attachment.

If you have any questions regarding our comments, please feel free to call me or Mr. Nolan Hirai of my staff at (808) 586-4200.

Sincerely,

WILFRED K. NAGAMINE
Manager, Clean Air Branch

NH:nn
Enclosures

CAB's Comments on Draft Title V Program Evaluation

The following are the Hawaii Department of Health, Clean Air Branch (CAB)'s comments on the draft Title V program evaluation. The numbering system used in this document corresponds to the numbering in the draft program evaluation.

2. PERMIT PREPARATION AND CONTENT

2.1 Finding: The CAB produces detailed statements of basis to document its title V permitting actions.

Recommendation: The CAB should continue its practice of producing detailed statements of basis to document its title V permitting actions. However, EPA recommends that the CAB improve these documents by providing more complete and accurate explanations of the decisions made in the permitting process. The CAB should review Findings 2.2 through 2.7 of this report and develop a plan to implement our recommendations.

Comment: Thank you for recognizing that CAB produces detailed statement of basis. We have addressed the recommendations of providing more complete and accurate explanations in the permit decisions in our comments for Findings 2.2 through 2.7.

2.2 Finding: The CAB does not document its periodic monitoring decisions.

Recommendation: The CAB should address monitoring on a case by case basis in its statements of basis. The CAB should describe the nature and rationale for any periodic monitoring that it has added to the permit, or explain that no additional monitoring is required because the monitoring in the underlying applicable requirement is sufficient to assure compliance.

Comment: CAB will provide more detail and discussion on the incorporation of any periodic monitoring requirements in the statement of basis. Consistent with federal guidance, we do incorporate appropriate periodic monitoring in all covered source permits to address the gaps in the applicable requirements and ensure continuous compliance.

2.3 Finding: The CAB's statements of basis for minor permit revisions do not provide sufficient explanation of why the revisions qualify as minor.

Recommendation: In its statements of basis, the CAB must document why permit modifications that are processed without public notice qualify as minor modifications. These explanations should address all of the possibly applicable minor modification gatekeepers, and provide sufficient detail to allow permit reviewers to understand why the proposed modification is not a significant modification.

CAB's Comments on Draft Title V Program Evaluation

Comment: CAB will provide more detail and discussion on the basis for why a modification qualifies as a minor modification. We note that the minor modification definition in HAR, Chapter 11-60.1 incorporates additional gatekeepers and therefore is more stringent than that required by 40 CFR Part 70. These additional restrictions to qualify as a minor modification include no emission increases above the permitted limits and no emission increase above a specified level for pollutants not limited by the permit.

We also offer the following correction to the discussion for Finding 2.4. The discussion states that the permit for Aloha Petroleum was incorrectly processed as a minor modification. According to our records, this permit was processed as a significant modification including providing for a 30-day public comment period.

2.4 Finding: The analysis of CAM applicability in statements of basis has been inconsistent.

Recommendation: The CAB should devote more attention to CAM applicability during its internal review process for permit renewals and significant permit revisions. In addition, the CAB should seek additional CAM training opportunities for staff, including the class offered by EPA's Air Pollution Training Institute (APTI). (See Finding 7.1 for a discussion of CAB's training needs.) The CAB may also want to develop CAM guidance for permit writers, which EPA could review upon request.

Comment: CAB agrees that additional CAM training may be beneficial. We note that on more recent projects, we have consulted with EPA headquarters on multiple occasions regarding CAM issues prior to finalizing our determinations.

2.5 Finding: The CAB often states in statements of basis that sources are synthetic minors without explanation.

Recommendation: The CAB should expand its explanations of sources' synthetic minor status in its statements of basis, especially when the PTE limits are being proposed for the first time. Statements of basis should describe whether PTE is being limited to assure compliance with ambient air quality standards, or to avoid otherwise applicable requirements. The CAB should also identify the pollutant(s), and explain how the permit effectively limits PTE.

Comment: CAB will provide more detail and discussion on the synthetic minor source determination. All permits for synthetic minor sources do incorporate conditions that are enforceable as practical matter to limit the potential emissions consistent with federal guidance.

CAB's Comments on Draft Title V Program Evaluation

- 2.6 Finding:** The CAB streamlines overlapping applicable requirements but does not document its actions in its statements of basis.

Recommendation: Permit writers should familiarize themselves with EPA's streamlining policy, as set forth in White Paper 2. The CAB should document all instances of streamlining of overlapping applicable requirements in its statements of basis. The citations of origin and authority for permit conditions that contain streamlined requirements must include the subsumed requirements in addition to the most stringent requirements.

Comment: CAB will provide discussions on any streamlining of overlapping applicable requirements in the statement of basis.

- 2.7 Finding:** The CAB does not identify which HAR provisions cited in its statements of basis and permits are in the SIP.

Recommendation: CAB should identify HAR rules that are in the SIP in its statements of basis, and distinguish between federally enforceable and state-only provisions of its rules.

Comment: CAB acknowledges that Hawaii's SIP requires updating and that the current administrative rules, Chapter 11-60.1 which implements the Title V requirements are not currently incorporated in the SIP. The SIP incorporates the previous administrative rules, Chapter 11-60.

We recognize the requirement to distinguish between state and federal provisions, but do not believe it would be beneficial to specifically identify and provide discussion on provisions in our old administrative rules in the statement of basis. We do address the requirements of our current administrative rules many of which are identical or have been derived from the provisions of the previous rules. All covered source permits do incorporate citations of the SIP for all applicable permit conditions.

- 2.8 Finding:** The CAB does not identify PSD conditions in its citations of origin and authority in its covered source permits.

Recommendation: The CAB should clearly identify PSD conditions in its citations of origin and authority by including descriptive text (e.g., "PSD") or citations to 40 C.F.R. 52.21 (EPA's PSD regulations, which CAB implements via its PSD delegation), in addition to numerical HAR citations.

Comment: CAB will provide specific citations of origin and authority for PSD permit conditions.

CAB's Comments on Draft Title V Program Evaluation

- 2.9 Finding:** CAB permits contain alternative operating scenarios that allow identical replacements of emission units without new source review.

Recommendation: CAB permits should specify a maximum amount of time that temporary replacement units can remain at covered sources that have alternative operating scenarios that include equipment replacement. This allowable replacement period should not exceed 12 months, which would ensure that the emission unit is not considered a permanent part of the stationary source.

Comment: CAB will incorporate conditions to limit the use of any temporary replacement unit to a period not to exceed twelve months.

3. MONITORING

- 3.1 Finding:** Title V permits generally contain monitoring sufficient to determine compliance with applicable requirements.

Recommendation: The CAB should continue to ensure that all title V permits have monitoring sufficient to determine compliance.

Comment: Thank you for recognizing that CAB's permits generally do contain monitoring sufficient to determine compliance with applicable requirements.

- 3.2 Finding:** The CAB incorporates appropriate performance and quality assurance requirements into permits for sources with CEMS.

Recommendation: The CAB should continue to ensure that all permits for sources that operate CEMS to demonstrate compliance with federally enforceable emission limits contain the required Part 60 performance and quality assurance requirements

Comment: Thank you for recognizing CAB for incorporating appropriate performance and quality assurance requirements into permits for sources with CEMS. We offer one correction to the discussion pertaining to the acid rain regulations. Hawaii is not subject to the acid rain regulations, as these regulations only apply to the continental United States.

- 3.3 Finding:** The CAB's monthly visible emissions survey permit condition allows unwarranted use of a Ringlemann Chart in some cases, and does not provide an indicator to determine whether additional monitoring should be required.

Recommendation: The CAB should consider on a case-by-case basis whether permits should allow the use of a Ringlemann Chart by opacity

CAB's Comments on Draft Title V Program Evaluation

readers because black plumes are expected from some emission units. When it is allowed, the CAB should revise its permit condition to require that only certified Method 9 readers may use a Ringlemann Chart. The CAB should also craft the condition so that it serves as a gatekeeper that can trigger additional monitoring, e.g. a Method 9 observation, if certain criteria are met. Non-certified readers should only be required to document whether or not there are visible emissions using EPA Method 22.

Comment: CAB acknowledges EPA's findings and recommendations and will revise future covered source permits accordingly. The original intent of allowing the use of the Ringlemann Chart in lieu of Method 9 was to alleviate the burden for all sources to have certified readers. Because Hawaii's Title V sources include nonmajor sources, many of which are small businesses, it was initially believed that requiring all sources to have certified readers or to hire contractors every month to perform two (2) six-minute readings was over-burdensome. The Ringlemann chart was intended to be used as an indicator of possible opacity problems and not as a replacement for a certified reader performing Method 9. Sources were still required to do a Method 9 reading at a minimum on an annual basis. Prior to implementing these periodic opacity monitoring requirements with the use of the Ringlemann Chart in the mid-1990s, CAB had many discussions with and obtained approval from EPA, Region 9.

4. PUBLIC PARTICIPATION AND AFFECTED STATE REVIEW

4.1 Finding: The CAB has encountered EJ issues less frequently than other agencies in Region 9, but believes that EJ training would be useful in helping them identify and address potential EJ issues.

Recommendation: The CAB should seek air-related EJ training and consider hiring a modeler to assist with siting monitors and other issues (See Finding 7.4 for a discussion of CAB's resource needs, including modeling). We also encourage the CAB to invest in mapping software (geographical information system, or GIS) and modeling software to learn more about how communities where the number of facilities is increasing may be impacted.

Comment: CAB agrees that we have not encountered many environmental justice (EJ) issues and that EJ training may be beneficial. We will also explore the possibility of hiring a modeler or using in-house expertise to assist in the siting of monitors, and acquiring mapping and modeling software to learn more about how communities may be experiencing cumulative impacts by the increasing amount of facilities.

CAB's Comments on Draft Title V Program Evaluation

- 4.2 Finding:** Public notices are published in newspapers depending on the island on which the facility is located.

Recommendation: The CAB should continue this method of public outreach and look for means to publish these notices in languages other than English where appropriate. The CAB may also want to provide a means for foreign language speaker outreach, such as noting on its website that additional information can be provided in other languages or that staff may be available to talk to non-English speakers to answer their questions in their native language. These approaches may be more cost-effective than translating multiple documents.

Comment: CAB acknowledges EPA's recommendation to publish notices in languages other than English where appropriate. Hawaii's population has a very high multi-ethnicity makeup where publishing in different languages may not be feasible on a routine basis. We are not aware of any other federal, state, or county agency in Hawaii that publishes public notices in a language other than English. CAB may consider publishing a notice in a different language if a project will be located in an area where there is a high population density of a specific ethnicity. We would also note that our notices are often published in multiple newspapers, both statewide and county newspapers, beyond what is required under 40 CFR Part 70.

- 4.3 Finding:** The CAB does not have staff dedicated to public outreach.

Recommendation: The CAB should expand its community outreach functions, including appropriate translation services.

Comment: CAB will explore the possibility to expand its community outreach functions. We note that in addition to public comment periods and public hearings, CAB does provide public outreach including conducting workshops for a number of different groups and organizations, hosting informational meetings, and attending neighborhood board meetings and other business and public forums.

- 4.4 Finding:** The CAB could increase the effectiveness of its public outreach by expanding the amount and type of title V permitting information published on its website.

Recommendation: EPA understands that the CAB may not have direct control of the content of its website. However, EPA encourages the CAB to work within HDOH to expand title V permit content information on its website in order to increase public access to the permitting process. Ideally, this website upgrade would include posting proposed and final permits and statements of basis, and information on how a member of the

CAB's Comments on Draft Title V Program Evaluation

public can petition EPA to object to a proposed covered source permit. The CAB may want to review the websites of the Bay Area Air Quality Management District and the Arizona Department of Environmental Quality, which EPA believes are good examples of using the internet to disseminate title V information to the public.

Comment: CAB will explore the feasibility of expanding the content of the Title V information on its website.

5. PERMIT ISSUANCE / REVISION / RENEWAL

5.1 Finding: The CAB is experiencing delays in issuing permit renewals.

Recommendation: The CAB should develop a plan for preventing growth of the title V renewal application backlog and eliminating the current backlog.

Comment: CAB is aware of the Title V renewal application backlog and will explore possible ways to reduce the backlog. With the existing resources and the competing emphasis and priority that is being placed on the processing of applications for new and modified sources, it may be difficult to address this issue in the near future.

5.2 Finding: Many minor revisions take longer than 90 days to process.

Recommendation: The CAB should work to reduce the time it takes to process minor revisions to 90 days or less. See Finding 7.5 for a discussion of the efficient use of title V fee revenue, which could improve minor revision permit processing time.

Comment: CAB's Title V program is an integrated permit program incorporating both the preconstruction and operating permit requirements. Delays are often encountered due to the preconstruction review requirements especially when there is a need to perform an air quality modeling assessment. In certain cases, when the application review indicates modeling noncompliance, it may not be achievable to process the application within 90 days unless we deny the application and have the applicant resubmit. Our general preference is to work with the applicant until compliance is demonstrated so the permit can be issued rather than deny the application due to a modeling noncompliance. CAB already assigns high priority for all modification permits and will examine further on ways to reduce the processing time.

CAB's Comments on Draft Title V Program Evaluation

- 5.3 Finding:** The CAB does not provide EPA and the public an opportunity to review and comment on proposed synthetic minor operating permits for non-covered sources.

Recommendation: The CAB should provide EPA the opportunity to review proposed synthetic minor permits for non-covered sources, and submit copies of the final permits.

Comment: CAB agrees that neither Part 70 nor our Title V program approval require that synthetic minor source permits be sent to EPA. We would be willing to work with EPA to develop a process to provide copies of the final synthetic minor source permits to EPA. This same issue appears to have been raised in other program evaluations where it may be more effective if EPA, Region 9, developed a policy/process on the review of synthetic minor source permits for its member states and local districts.

- 5.4 Finding:** The CAB submits proposed title V permits to EPA electronically.

Recommendation: The CAB should continue to use EPSS to submit permits to EPA.

Comment: CAB will continue to submit proposed Title V permits to EPA electronically.

- 5.5 Finding:** The CAB does not consistently send final title V permits to EPA.

Recommendation: The CAB should transmit final permits to EPA in all cases when the final permit differs from the proposed permit.

Comment: CAB will ensure that all final permits, when the final permit is different from the proposed permit be transmitted to EPA.

6. COMPLIANCE

- 6.1 Finding:** The CAB does not include compliance schedules in title V permits.

Recommendation: CAB must include a compliance schedule in the title V permit if a source is out of compliance with an applicable requirement when CAB issues the permit. CAB should discuss the compliance status of such sources in its statements of basis.

Comment: CAB acknowledges and will follow EPA's recommendations to include a compliance schedule in the Title V permit if a source is out of compliance at permit issuance and provide a discussion in the statement of basis. We are not aware of any facility submitting a compliance plan

CAB's Comments on Draft Title V Program Evaluation

with the permit application that required a compliance schedule to be incorporated in the permit. Most noncompliance issues occur after the permit is issued and processed through our enforcement procedures. We do not believe it is necessary to reopen a permit to incorporate a compliance schedule to address a noncompliant issue.

- 6.2 Finding:** CAB's permit writers use verbal waivers to extend periodic performance testing deadlines without informing compliance staff.

Recommendation: CAB should document in writing all extensions of performance testing requirements that it grants. In addition, as an organizational matter, only CAB compliance staff should grant extensions of performance testing deadlines, since this function is most closely associated with compliance. Permit writers should refer all sources seeking extensions to CAB compliance staff. EPA also recommends that if the CAB wants to continue this practice, permits should allow such requests and specify that they must be submitted in writing.

Comment: CAB will initiate a procedure to document all approvals of extensions of stack test submittal deadlines and testing dates. For clarification purposes, CAB does not verbally approve stack tests waivers. All stack test waiver requests and approvals are done in writing. We also acknowledge EPA's recommendations that the compliance staff should grant the extensions, however our current organizational structure identify the permitting section as responsible for these functions. We will examine the need for any changes to our organizational structure.

- 6.3 Finding:** CAB finds compliance certifications, deviation and semi-annual monitoring reports useful in identifying compliance issues.

Recommendation: EPA commends CAB for its review and use of title V compliance certifications, semiannual monitoring reports, and deviation reports and encourages CAB to continue this practice.

Comment: Thank you for commending CAB for its use of Title V compliance certifications, semiannual monitoring reports, and deviation reports.

7. RESOURCES AND INTERNAL MANAGEMENT

- 7.1 Finding:** CAB has identified several areas where it has training needs.

Recommendation: The CAB should consider identifying core training that staff working on title V permitting should complete. The CAB should review the Air Pollution Training Institute website, found on the internet at http://www.epa.gov/apti/course_topic.html for specific areas of training that

CAB's Comments on Draft Title V Program Evaluation

are available. In addition, in other title V program evaluations, EPA has found good examples of the type of training that the CAB may find most useful. EPA will work with the CAB to provide air-specific EJ training.

Comment: CAB will take a closer look at its training needs including reviewing the courses offered by EPA's Air Pollution Training Institute.

7.2 Finding: Over the past two years, the number of vacant permit writer positions at the CAB has increased.

Recommendation: In order to improve permit writer retention and to address the permitting backlog, EPA believes that the CAB (or a third party with expertise) should conduct a salary analysis and a workload assessment. A salary analysis that compares CAB permit writer salaries to other similar positions within HDOH may lead to a system in which permit writers can demonstrate growth through their careers in a way that is comparable to what other branches within HDOH offer and might also reduce the frequency of staff transferring from the CAB's Engineering Section to other positions within HDOH. A workload assessment would help the CAB review its backlog of title V renewals and permit modifications and determine what additional resources are necessary to reduce it. It may also be desirable to assess upcoming workload from the Greenhouse Gas Tailoring Rule in addition to the CAB's title V workload. The salary analysis and workload assessment used together may also identify additional opportunities for qualified candidates for senior positions within the Engineering Section.

Comment: CAB welcomes a thorough assessment of the engineering/permitting section over the past two (2) years by an experienced evaluator. The review should include but not limited to staff utilization, supervisory direction/oversight, permitting program deficiencies, staff turnovers, position vacancies, salaries, workload, backlog, HDOH reallocation procedures, HDOH hiring restrictions and furlough, and the overall deficiencies and priorities for CAB. To improve the efficiency and effectiveness of the engineering/permitting section, Kaizen has also been suggested. CAB would appreciate the names of companies that can provide the assessment of permitting programs.

In the discussion for Finding 7.2, it was stated that CAB had a 27% vacancy rate among permit writer positions (three vacant positions) inferring that there were a total of eleven permit writer positions. For clarification, the Engineering Section has a total of 13 engineers which equates to a 23% vacancy rate (three vacant positions) for the section. At the time of the interview, seven of the eight engineering positions assigned to permit writing were staffed equating to a 12.5% vacancy for the permit writers. Due to the lack of planning and program development

CAB's Comments on Draft Title V Program Evaluation

capability within CAB, it is necessary to redirect the other five engineers to address such tasks as the Statewide Emissions Inventory, Regional Haze, NAAQS revisions, and SIP updates

- 7.3 Finding:** Communication and coordination among the CAB's offices involved in the issuance and oversight of title V permits needs improvement.

Recommendation: The CAB should review and seek to improve its communication and coordination among the offices involved in issuance and oversight of title V permits. Specifically, the CAB should consider improving its interoffice communications in the review and preparation of draft title V permits to ensure that permits address significant legal, policy and technical issues. With respect to oversight and program implementation, the CAB should focus on improving communication on implementation issues such as the warning letter and NOV issues discussed above and the verbal waiver issue identified in Finding 6.2.

Comment: CAB will evaluate its internal communication procedures including the need to cross-review draft permits and the possibility of one section issuing both the warning letters and NOVs. In the discussion for Finding 7.3, it was stated that there is confusion among the staff in the Monitoring and Analysis, and Enforcement sections regarding the issuance of warning letters. We do not believe there is confusion, but rather a disagreement on which section may be better suited to process the warning letters.

- 7.4 Finding:** The CAB lacks sufficient modeling and source testing resources.

Recommendation: The CAB should hire and retain employees with modeling and source test expertise to support its permitting program.

Comment: CAB acknowledges EPA's recommendation to hire and retain employees with modeling and source test expertise to support the permit program. We note that we do have a modeler and a person overseeing source testing within the CAB organization. Both these persons do not solely perform these functions and have other duties, but they do provide specialized skills.

We also offer the following clarifications in the discussion for Finding 7.4. For PSD permitting, we do not routinely rely on EPA modelers but rather primarily performs the assessment internally. Pursuant to our PSD delegation agreement with EPA, we do require EPA's concurrence with all PSD modeling assessments. Another clarification is that the Monitoring and Analysis section is responsible for reviewing the protocols and results

CAB's Comments on Draft Title V Program Evaluation

of all opacity testing whereas the Engineering Section reviews the protocols and results of all stack testing for particulates and gaseous pollutants.

- 7.5 Finding:** The CAB collects title V fees adequate to implement its program. However, there are staffing and training needs that are not being met that are affecting program implementation.

Recommendation: In light of on-going resource needs and the CAB's robust Clean Air Special Fund balances over the years, we believe that the CAB should reconsider its tendency to waive annual fees. Given the CAB's resource needs in hiring, training, and retaining staff, EPA is growing concerned that the CAB is not allocating its title V fee revenue appropriately as required by 40 C.F.R. 70.9 and 70.10(c)(1)(ii)(D). In the short term, instead of waiving fees, EPA encourages the CAB to fully explore the latitude it has within the State's spending restrictions and the extent to which those limitations apply to the Special Fund (especially with respect to the use of contracts to meet present resource needs.). In the longer term, the CAB should devise and implement a plan to spend title V fee revenue to improve the effectiveness of its permitting program. The specific programmatic areas that EPA believes the CAB should focus on in both the short and long term are the training and resource needs identified in Findings 7.1, 7.2, and 7.4.

Comment: CAB has considered the contracting option to provide assistance to the engineering/permitting section. Unfortunately, the contracting process takes six to twelve months to complete provided there are no administrative restrictions as it exist today. From past experience with permitting contractors, much time and manpower are also lost due to the steep learning curve and the oversight required because of HDOH unique permitting approach. In regards to short/long term training, CAB has always encouraged all the sections to propose and take advantage of any training that would be beneficial to their operations. As stated earlier, Kaizen was suggested to improve the efficiency and effectiveness of the engineering/permitting section.

- 7.6 Finding:** The CAB has not updated its record retention policy to reflect current program needs.

Recommendation: EPA recommends that the CAB update its record retention policy to make it consistent with its program. For an example of another agency's record retention policies, see EPA's report, "San Diego County Air Pollution Control District Title V Operating Permit Program Evaluation Final Report", dated September 30, 2008 at pages 35 and 36. Additionally, in situations where a permitting authority discards title V files,

CAB's Comments on Draft Title V Program Evaluation

EPA recommends that permitting authorities preserve the history and background of the title V facilities.

Comment: CAB will review its records retention policy to ensure consistency with the program needs. CAB record retention practices complies with 40 CFR Part 70 including retaining records for a period of five (5) years. All active permit files are maintained for the life of the permitted equipment and all closed files are ultimately electronically archived in a permanent form. Title V records are not destroyed.

8. TITLE V BENEFITS

8.1 Finding: Title V reporting requirements have led to increased rates of CAA compliance.

Recommendation: EPA has no recommendation for this finding.

Comment: CAB agrees with the finding.

8.2 Finding: The CAB's covered source program makes detailed information on Hawaii's stationary sources available to the public.

Recommendation: EPA has no recommendation for this finding.

Comment: Thank you for recognizing that CAB makes detailed information on the permits available to the public.

8.3 Finding: The quality of inspections has improved as a result of title V.

Recommendation: EPA has no recommendation for this finding.

Comment: CAB agrees with the finding.

8.4 Finding: The CAB developed a small business assistance program that did not exist prior to the advent of the CAB's title V program.

Recommendation: The CAB should continue its effective methods of small business assistance.

Comment: CAB will continue to implement its small business activities.

EPA Region 9 Responses to CAB Comments on the Draft Title V Program Evaluation Report

EPA has reviewed CAB's comments and provides the following responses.

Finding 2.3

EPA appreciates CAB's commitment to provide more detailed and useful analyses of the gatekeepers in statements of basis for minor modifications. The two additional gatekeepers in CAB's regulations that are not in Part 70 further highlight the need for CAB to address all possible applicable minor modification gatekeepers in its statements of basis.

Based CAB's documentation in its comment, EPA has deleted the Aloha Petroleum discussion in this Finding.

Finding 2.7

It is important to document all applicable requirements in statements of basis, including SIP rules. We believe CAB could do this with minimal effort by simply indicating (perhaps in tabular format) which SIP rules apply to the facility, and what the corresponding current rules are. To the extent that any SIP requirements are not identical to current requirements, CAB could document any requirements from its current administrative rules that are not federally enforceable. This explanation could be written one time for a given pair of SIP and current rules, and then used in future statements of basis. This enhancement of CAB's statements of basis would provide important context for permit reviewers without imposing any significant additional burden on CAB permit writers.

Finding 3.2

EPA has deleted the reference to acid rain regulations.

Finding 3.3

We are pleased that CAB will make changes to its opacity monitoring conditions. We can assist in any way that CAB finds useful.

Finding 4.1

EPA looks forward to working with CAB to provide EJ training. We are also available to review and provide advice on CAB's efforts to address the siting of monitors, and acquiring mapping and modeling software to learn more about how communities may be experiencing cumulative impacts. We will work with CAB to address this issue in its workplan.

Finding 4.2

We appreciate CAB's willingness to consider publishing newspaper notices in languages other than English if circumstances in specific projects warrant this approach.

Finding 4.3

We acknowledge and support CAB's proposed and existing efforts to expand its community outreach functions. We will work with CAB to address this issue in its workplan.

Finding 4.4

EPA supports CAB's efforts to explore the possibility of publishing additional title V content on its website.

Findings 5.1 and 5.2

EPA believes that the renewal and minor permit revision backlogs are directly related to the resource and funding issues identified in our report (Chapter 7). While we appreciate CAB's comments on these issues, we believe CAB should more carefully consider the linkage between the backlogs and its tendency to waive annual title V fees. The juxtaposition of fee waivers and sometimes ineffective program implementation is one of the most fundamental themes in our report. The workload challenges created by CAB's integrated permitting program further highlight the need for CAB to think creatively about ways to use fee revenue more effectively. See also our response to CAB's comments on Finding 7.5 below.

Finding 5.3

EPA would like the opportunity to review and comment on CAB's proposed synthetic minor permits that will allow facilities to avoid title V permitting. We will work with CAB to create a Hawaii-specific process for synthetic minor permit review.

Finding 6.1

EPA appreciates CAB's willingness to address our concerns by including compliance schedules in title V permits if the source is out of compliance at the time of permit issuance, and addressing noncompliance issues in statements of basis. We also agree that is not necessary to reopen a permit to incorporate a compliance schedule to address a noncompliance issue that arises after permit issuance.

Finding 6.2

EPA is encouraged by CAB's comments on this finding. We believe that permitted facilities and CAB staff have been confused by the current practice of inadequately

documenting testing waivers, as described in our finding. We look forward to reviewing CAB's possible solutions to address this issue in its workplan.

Finding 7.2

We believe that the vacancy rate provided by CAB in its comment is based on a different timeframe than the one we use in our report. The vacancy rate cited in our draft report was based on the numbers at the time of our site visit in August 2009. We have not revised the rate, but in the final report we have clarified the time frame associated with the vacancy rate we cite. We understand the need for CAB to address competing priorities. However, in doing so, it is clear that there have been impacts on the CAB title V program which have contributed to permitting backlogs and other implementation issues identified in Chapters 2 and 5 of the report. We encourage CAB to review its title V program resource needs in the near term.

Finding 7.3

We appreciate CAB's comment. We have changed the report to identify the issue in the discussion as "disagreement" as opposed to "confusion." EPA believes that the practical impact is the same and that CAB should address the issue.

Finding 7.4

EPA acknowledges CAB's comments. We encourage CAB to sustain its current efforts in modeling for PSD permits. We also want to encourage CAB to continue working with EPA as appropriate under the PSD delegation agreement.

Finding 7.5

Permitting authorities are required by 40 CFR 70.9 to collect and retain sufficient fee revenue to implement the title V program, including the timely processing of permit renewal and modification applications. While EPA supports CAB using a Kaizen-type approach to identifying efficiencies, we have found that you collect sufficient fee revenue, but that it could be used more effectively to hire, train, and retain staff to ensure quality and timely permitting actions. Please develop and submit a plan to EPA that addresses your ability to hire, train, and retain staff, including a study of the salary structure of other branches in DOH and a discussion on how title V fees could potentially be used to equalize any discrepancies in salaries with those branches in order to minimize loss of experienced personnel and to provide for adequate career growth paths.

Finding 7.6

EPA looks forward to CAB's description of its record retention policy revision efforts in its workplan.

Other Findings

EPA does not have any responses to CAB's comments on the following findings:

- 2.1, 2.2, 2.4, 2.5, 2.6, 2.8, 2.9
- 3.1
- 5.4, 5.5
- 6.3
- 7.1
- 8.1 through 8.4